



POLICE DEPARTMENT

January 24, 2011

MEMORANDUM FOR: Police Commissioner

Re: Detective Clifton Lawrence
Tax Registry No. 890339
Military & Extended Leave Desk
Disciplinary Case No. 81531/06

The above-named member of the Department appeared before me on August 12, 2010, August 13, 2010, October 8, 2010, October 20, 2010, and December 7, 2010¹, charged with the following:

1. Said Detective Clifton Lawrence, assigned to Narcotic Borough Brooklyn North, while off-duty, on or about and between August 1, 2002 and November 29, 2005, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that he repeatedly engaged in oral and anal sexual conduct with an individual known to this Department when said individual was less than (13) years old [sic] of age and said Detective was greater than eighteen (18) years of age.

P.G. 203-10, Page 1, Paragraph 1 – GENERAL REGULATIONS
NYS PENAL LAW SECTION 130.75(1)(3)(b) – COURSE OF SEXUAL
CONDUCT AGAINST A
CHILD IN THE FIRST
DEGREE

2. Said Detective Clifton Lawrence, assigned to Narcotic Borough Brooklyn North, while off-duty, on or about and between August 1, 2002 and November 29, 2005, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that he knowingly engaged in conduct likely to be injurious to the physical, mental or moral welfare of a child less than seventeen (17) years old, to wit: said Detective repeatedly engaged in oral and anal sexual conduct with an individual known to this Department at locations known to this department when said individual was less than seventeen (17) years of age.

¹ The trial was held open until this date to allow the Respondent to submit slides in conjunction with the transcript of testimony of his expert witness.

P G 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
NYS PENAL LAW SECTION 260 10(1) – ENDANGERING THE WELFARE
OF A CHILD

3 Said Detective Clifton Lawrence, on or about and between January 1, 2004 and November 29, 2005, engaged in conduct prejudicial to the good order efficiency or discipline of the Department, in that said Detective did act in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old, in that said Detective, not being the biological father or legal guardian of a person known to this Department less than seventeen (17) years of age, did inappropriately touch said person in the groin and/or buttock area, in that said Detective did shave and/or cut the pubic hairs of said person and/or did apply lotion and/or medicine to said person in said areas *(As amended)*

P G 203-10, Page 1, Paragraph 1 – GENERAL REGULATIONS
NYS PENAL LAW SECTION 260 10 – ENDANGERING THE WELFARE
OF A CHILD

4 Said Detective Clifton Lawrence, on or about and between January 1, 2003 and November 29, 2005, engaged in conduct prejudicial to the good order efficiency or discipline of the Department, in that he did act in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old, in that said Detective, having knowledge or suspicion that Nicole Sellars was using illegal drugs and was the custodial parent of an individual known to this Department who was less than seventeen (17) years of age, did fail to report Nicole Sellars, as a required as a mandatory reporter *(As amended)*

P G 203-10, Page 1, Paragraph 1 – GENERAL REGULATIONS
NYS PENAL LAW SECTION 260 10 – ENDANGERING THE WELFARE
OF A CHILD

Social Services Law – Title 6 – Section 413 – PERSONS AND OFFICIALS
REQUIRED TO REPORT CASES
OF SUSPECTED CHILD ABUSE
OR MALTREATMENT

5 Said Detective Clifton Lawrence, on or about and between January 1, 2005 and November 29, 2005, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that he did act in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old, in that said Detective, while in the company of an individual known to this Department who was less than seventeen (17) years of age was photographed with said individual when both parties were nude *(As amended)*

P G 203-10, Page 1, Paragraph 1 – GENERAL REGULATIONS
NYS PENAL LAW SECTION 260 10 – ENDANGERING THE WELFARE OF
A CHILD

The Department was represented by Lisa M McFadden, Esq , Department Advocate's Office, and the Respondent was represented by Peter Brill, Esq

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review

DECISION

The Respondent is found Not Guilty

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SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Andrew Derr, Lieutenant Edward Rodriguez, Detective George Boston, Sergeant Julius Morton, Dr Aaron Miller, Sergeant Wilbert Crawley, Dr Charles Heller and Nicole Sellars as witnesses

Lieutenant Andrew Derr

Derr has been with the Department for 13-and-a-half years and has been a lieutenant for about four-and-a-half years. In November 2005, he was assigned to the Internal Affairs Bureau (IAB) Group 41 where he was responsible for investigating officers assigned to Narcotics, Vice and the Organized Crime Control Bureau (OCCB).

On November 28, 2005, he was involved in a callout regarding an allegation of sexual abuse. Derr stated that at about 1600 hours the IAB command center contacted his group concerning a 911 call made by Nicole Sellars at about 1438 hours [Department's Exhibit (DX) 1, SPRINT² report of Sellar's call]. The information Derr received was that the Respondent [Sellars' former boyfriend] was allegedly engaged in the sexual abuse of Sellars' 11-year-old child.

Derr determined that Sellars was at [REDACTED] Hospital and he went there with Lieutenant Kearney, Sergeant William Crowley and Sergeant (now Lieutenant) Edward Rodriguez. They met with Milly Toro the child protection coordinator, and Dr Shukat, who informed him that Sellars and her 11-year-old son [REDACTED] were making an allegation that the Respondent had sexually abused the boy rectally and orally for approximately three years.

Derr then conducted a taped interview of Sellars. During the interview Sellars indicated that [REDACTED] had written something down. She said she had asked [REDACTED] to write down his thoughts in a notebook. As part of the investigation, Derr obtained that notebook. Derr agreed that he did not see [REDACTED] write in the notebook and that he was relying on Sellars, who told him that [REDACTED] made those notes (DX 2, copies of two pages).

² Special Police Radio Inquiry Network

of handwritten notes)

During her interview, Sellars received a phone call which she did not answer. She said that, based on the number, it was from the Respondent. Derr said that he and Kearney brought Sellars back to the Group 41 office where they set up a controlled phone call between the Respondent and Sellars. The Respondent did not make any admissions during that conversation. Derr said the Respondent indicated that he suspected that a report had been made. Further, Derr said the Respondent indicated that his sister had told him that Sellars had gone to [REDACTED] Hospital and had called 911. The Respondent said he had to make a notification to his job. Derr had performed a check and learned that the Respondent had, in fact, made a notification at he believed, 1940 hours. Derr testified that the controlled phone call was at about 2010 hours and thus the notification by the Respondent was made before the controlled phone call.

On cross-examination, Derr conceded that he did not know how the notebook pages came into his possession. He conferred with one of his fellow officers who told him it was in the callout folder the next day. The book, he said, was photocopied and the copies placed in the callout folder. He had no idea where the original is located. He did not know who made the copies and he had no knowledge of the original being compared to the copies.

Lieutenant Edward Rodriguez

Rodriguez has been a member of the Department for 18 years. He is currently assigned to Group 41, where he has been for nine years. He has been a lieutenant for four years.

In November 2005, he was a sergeant in Group 41. On November 28, 2005, he was involved in a callout and was directed to respond to a hospital and assist sergeants who were already present. The subject was the Respondent and the complainant was Sellars. After an interview was conducted with Sellars, he went to her residence to secure it until she arrived. He waited outside the apartment for about three hours. When Sellars arrived, he went inside to collect evidence. Seven items of such evidence were listed on his worksheet. They consisted of a pink towel that had been draped over a shopping card just outside the bathroom door, a purple towel recovered inside the bathroom, a white towel hanging on a clothes hanger suspended from a light fixture inside [REDACTED] bedroom, a bed sheet and a fitted bed sheet taken from [REDACTED] bed and a pair of blue shorts draped over a radiator inside [REDACTED] room.

Rodriguez said that they waited for the Crime Scene Unit to arrive and bag the items. They were then taken to the 40 Precinct and vouchered. After that, they were brought to the medical examiner's office for cytology.

On cross-examination, Rodriguez agreed that Sellars pointed out the items that were later tagged as evidence. Sellars did not give any sort of narrative when she pointed out certain things during her interview and he recalled that these items might be of evidentiary value. He said they waited about an hour for the Crime Scene Unit to arrive. Rodriguez said they were in the living room most of the time. Rodriguez agreed that he might have lost sight of Sellars for a minute or two.

Detective George Boston

Boston has been with the Department for 24-and-a-half years He is currently with the Crime Scene Unit where he has been for over 17 years On November 29, 2005, he received a callout for a confidential IAB investigation of some type of sexual assault

Boston went to Sellar's apartment in the [REDACTED] and documented the scene by photographing the perimeters, sketching and collecting evidence at the scene He said the apartment is on the second floor of a multiple dwelling building When he arrived, he collected some evidence that was pointed out to him, some shorts and some towels and washcloths He took photographs (DX 3A through 3P) He also diagramed the location

On voir dire, Boston said he measured the apartment in preparing the diagram (DX 4) With regard to angles, he indicated that it was done on a computer which is an illustration not to scale

Boston described the photographs in DX 3 He stated that 3A through 3E were pictures of the living room The hallway is pictured in 3F, 3G and 3K, while 3H shows the hallway with the bathroom on the left center of the photo Shown in 3I and 3P is a drying rack above the bathtub with a towel that was collected for evidence The first bedroom is pictured in 3J, while the rear or second bedroom is pictured in 3L (entrance to the room), 3M and 3N Also depicted in 3N, he said, is a pair of blue shorts on a radiator which he collected as evidence 3O is a photograph of a shopping cart outside the bathroom which depicts a washcloth that he collected as evidence

Boston also identified places on the diagram where he collected evidence He identified GB1 as denoting where he recovered the first washcloth and GB2 as a place in the bathroom where a towel was collected In the second bedroom he noted GB3 where

a towel was collected GB4 and GB5 where he collected bed sheets and a bedspread, and GB6, a radiator where he collected a pair of shorts. The evidence was packaged, he said, in a single bag and turned over to IAB investigators.

Sergeant Julius Morton

Morton is assigned to the OCCB Investigations Unit. He has been with the Department for 22 years. Morton testified that on November 29, 2005, while working in IAB Group 41, he was assigned to be present at an interview of [REDACTED] at [REDACTED] Hospital. The case worker, Toro, conducted the interview. Present were Johanna Hernandez, an assistant district attorney (ADA) assigned to the Child Sex Victims Unit of the Bronx District Attorney's office, Nicole Fraser,³ from the Administration for Children's Services (ACS), and Sergeant McDermott from Group 41 who accompanied him. Although Sellars was present at the hospital, Morton did not know exactly where she was, and she was not in the interview room or monitoring room. Morton said that [REDACTED]'s date of birth was October 25, 1994.

The interview was conducted at [REDACTED] Hospital in the child advocacy center. There was an interview room and a room from which the interview could be monitored which were separated by a one-way mirror. Morton described the room where the interview occurred as having no couches or desk and he said it was "child-friendly." He explained that from the interview room one could not see who was in the monitoring room. He said that he, McDermott, Hernandez and Fraser-Martinez were in the monitoring room. He was not aware of any "pre-interview" done with [REDACTED].

Toro, Morton said, explained who she was at the beginning of the interview. She

Later he described her as Fraser-Martinez

was asking very general questions as to what [REDACTED] liked to do, trying to get him to talk about himself, his activities, school and such " Toro, he said, asked [REDACTED] if he knew the difference between a truth and a lie and he indicated that he knew the difference [REDACTED] was also at the beginning of the interview, asked if he as able to name various body parts Morton said he referred to his genitalia as his "private" and he used the term 'butt'

Morton testified that the questions were open-ended to begin with and as [REDACTED] began to talk and explain, Toro sometimes asked more specific questions Describing what [REDACTED] had said, Morton testified that [REDACTED] basically said that he had been abused by the Respondent It started after a trip that the Respondent, [REDACTED] and he believed Sellars and possibly some other family members had taken "down South" [REDACTED] said that during the trip he [REDACTED] contracted a rash The Respondent came up with some cream that was supposed to treat the rash [REDACTED] said that either during the trip or very soon after, while he still had the rash, the Respondent applied the lotion on him Morton stated that [REDACTED] said that the rash was on very specific parts of his body on his legs, but that when the Respondent was applying the lotion or cream the Respondent touched him inappropriately"

Explaining what was meant by 'inappropriately' Morton said that [REDACTED] said that the Respondent would touch his genitals or Morton believed that the Respondent would touch him on the butt The best that Morton could remember was that the touching did not make [REDACTED] "feel right"

Morton stated

During the course of the interview, he [REDACTED] communicated that there were events that took place over

the next three years starting from when the trip was up until the incident that basically had happened that initiated the callout And he said it was about 50 times that he was engaged, that [the Respondent] would engage in sexual acts with him He described them as that [the Respondent] rubbed his penis on [REDACTED] anus, [the Respondent] inserted his penis into [REDACTED] mouth, [the Respondent] did place his mouth on [REDACTED] penis and anus, that [the Respondent] had anally penetrated him with his penis, and [the Respondent] had placed his hands on [REDACTED] penis and his genitals

As I said, he said that was over the course of three years, and from what I can recollect, he said it was about 50 times in that three-year period [REDACTED] indicated as well that he would -- well, that [the Respondent] would insert his penis into [REDACTED] mouth and that I recollect him saying that [the Respondent] would have [REDACTED] place his penis into [the Respondent's] anus

Morton said the [REDACTED] could not recall specific dates but that the events occurred in the residence where he lived with his mother and the Respondent at [REDACTED] and also at the home of the Respondent's former partner at [REDACTED] Road in the [REDACTED]

Asked if [REDACTED] described any conduct that could be considered masturbation by either party Morton responded

Well he described the last incident that happened, which was the incident that the callout was initiated for, he described the incident where he had spent the weekend with [the Respondent] and his mother in the house, and that [the Respondent's] other children were there, they spent the weekend I believe it was a Thanksgiving weekend and sometime on that Sunday, at the end of the weekend [the Respondent] and his mother took the other kids home

Sometime in the evening after the other kids had gone home back to their houses, [REDACTED] talked about his mother came home and took a nap and that he -- I believe he said he was either watching television or playing video games with [the Respondent] At some point -- they were sitting in the living room on the couch At some point, he said that

[the Respondent] left to check to see if Nicole [Sellars] was still sleeping, his mother was still sleeping and at some point very, you know, immediately after that, somehow they started to -- [the Respondent] and him started to masturbate together, and that [the Respondent] had [REDACTED] suck his nipples And at that point, he also said that during that time [the Respondent] tried to -- he attempted to penetrate his anus, but he ended up just rubbing his penis on [REDACTED] anus and that during that incident Nicole Sellars kind of walked in on them, or interrupted what they were doing

[REDACTED] said that his mother was very upset I remember [REDACTED] saying his mother was really screaming like what you are doing [REDACTED] said he was scared and that while [the Respondent] and his mother were engaging in some sort of verbal, I guess, dispute about what was going on, he slipped away and went back to the couch and, you know, just started either watching television or playing video games again Something like that

Morton could not recall [REDACTED] describing any act of masturbation occurring before that When asked if [REDACTED] described any situation in which ejaculation occurred, Morton testified

He mentioned that during some of these incidents, he knew that the incidents would be coming to an end because he would feel, he said, at time he said I felt something hot, sticky and wet on my back And he kind of insinuated that that would from [the Respondent], I guess an ejaculation That's the way he kind of knew that the incident was going to end

Morton could not recall [REDACTED] ever mentioning that he felt pain during these encounters Morton said that at the beginning of the interview [REDACTED] was not very communicative He said that Toro did an excellent job of engaging him and getting him to talk He noted that at one point Toro took a break and [REDACTED] was in the room not knowing that he was being observed and Morton said he "began to lighten up' and act a little bit freer and his demeanor changed'

Morton stated that [REDACTED] said that the Respondent had placed the cream all over his body while the rash was on his legs Morton said that it was during this time, while the cream was applied, that he first felt that the Respondent was touching him inappropriately and that he felt uncomfortable about it

After Sellars interrupted the last incident, Morton recalled, [REDACTED] said his mother, Sellars, gave him a bath and washed him She tried to get [REDACTED] to talk about it but he did want to and at some point Sellars asked him to write down his feelings for the Respondent Morton recalled one of the things that [REDACTED] said, which was that he was very angry at the Respondent, that he was a cop and he was supposed to protect them and did this He recalled [REDACTED] saying that if his biological father were out of jail he would kill the Respondent He also said he was scared because the Respondent had a gun

Later in the investigation, Sellars turned over a photograph memory card that she had used It contained two pictures of both [REDACTED] and the Respondent naked while the Respondent gave [REDACTED] a haircut (DX 5A and 5B)

As part of his investigative work, Morton learned that the medical examiner's office found semen on a lavender washcloth taken from Sellars' apartment The medical examiner's office concluded that it was semen from a person and they excluded [REDACTED] He also obtained a DNA sample from the Respondent which was delivered to the medical examiner's office

On cross-examination, Morton stated that he learned that the Respondent resided at [REDACTED] in [REDACTED] in 2005, in the same apartment where Sellars and [REDACTED] lived He also maintained an apartment with his partner on [REDACTED] Morton said he never visited that alternate address nor did he know if any investigator

did Morton agreed that [REDACTED] had claimed that episodes of sexual abuse occurred at that location

He did not recall reading anything about the age of the semen sample that was the subject of DNA testing in the report. Asked about the pictures on the memory card, he said that Sellars explained that they were pictures of the Respondent giving [REDACTED] a haircut. Morton did not recall her complaining about the circumstances and that she said she thought it was cute. As a result, she had not called ACS or the police or anything like that.

Going over the interview at [REDACTED] Hospital, Morton said that the only people in the interview room were [REDACTED] and Toro. In the monitoring room, behind the glass, were McDermott, Fraser-Martinez, Hernandez, and himself. Morton agreed that, at the beginning of the interview, [REDACTED] was not forthcoming. He agreed that, at some point, Toro took a break left [REDACTED] alone in the room and returned with a soda for him. When asked if after the soda he was more forthcoming, Morton explained

No, I mean through the whole interview I mean, at the beginning he was very uncommunicative and she had to engage him a little bit, and you know, he became a little more talkative. By the time we reached the break, he was much more relaxed, his demeanor

Morton said that he came to discover that this interview was not recorded in any way. He agreed that this occurred about five years ago. He agreed he was not taking notes during the interview nor did he have anyone else's notes of the interview. He agreed that he did not have a list of the questions asked nor did he recall the exact words of the questions.

When asked if in relation to the rash, Morton had obtained any medical records,

he said that Sellars had not mentioned taking [REDACTED] to the doctor He said that, according to Sellars, the Respondent produced the cream that he said would work He said that medical records had not been an issue

Morton could not recall [REDACTED] mentioning any place that sexual abuse occurred besides his own home and the home of the Respondent's partner Morton said he did not speak with Sellars after [REDACTED] interview He said that he was not able to pinpoint the 50 separate occasions that [REDACTED] said he was abused He said he never asked Sellars if she could specifically tell him the times [REDACTED] was alone with the Respondent but he noted that she did characterize their relationship as very close

Morton believed that [REDACTED] lived with the Respondent during the whole four-year period that the Respondent was with Sellars He did not recollect if [REDACTED] lived with his grandmother during that time nor did he recall if Sellars and [REDACTED] had lived in a shelter during that time He was not aware of any information that the Respondent had moved out of the apartment prior to the incident which led to the report

Morton did not recall if [REDACTED] had initially said to his mother that nothing had happened He did recall that [REDACTED] did not want to talk about the incident He was not sure how long it was after the incident that Sellars had [REDACTED] write everything down He was not aware of any large meeting called by Sellars involving family and friends before calling the police He was not aware if Sellars smoked marijuana and drank alcohol immediately after the Respondent left the residence that evening

Morton said that [REDACTED] was concerned for his safety but never said that the Respondent threatened him

On re-direct examination Morton testified that, immediately after the incident,

while Sellars and the Respondent were yelling. [REDACTED] said he slipped away and went back to the couch, pulled his pants up and started playing video games. He said that Sellars told the Respondent to get out, which the Respondent did.

Morton said this is the only sex crimes case he has handled. He agreed that this interview sticks in his mind. He said this was because of the subject matter and "[t]he statements from [REDACTED] were astounding, and they were remarkable statements that I will probably never forget for a long time."

On re-cross-examination, Morton said the information about the Respondent leaving the apartment did not come from Sellars but came from [REDACTED]. He said, did not quantify how long the argument lasted. He did not recall [REDACTED] saying that the Respondent said Sellars should call the police if she thought something was going on.

Dr. Aaron Miller

Miller graduated from Goshen College in December 1995 with a bachelor's degree in biology. He graduated from the Indiana University School of Medicine in 2000 and he did his pediatric internship and residency at New York Hospital Cornell, which he completed in 2003.

Miller stated that he is an assistant professor of clinical pediatrics for Weill Cornell Medical College. Prior to that, he was an assistant professor of Clinical Pediatrics at Albert Einstein School of Medicine. Currently, he testified, he is Director of the Lincoln Child Advocacy Center at Lincoln Hospital, which is one of the city's twelve associate and full member child advocacy centers in New York City.

Miller explained that the Child Advocacy Center is a multi-disciplinary center

that performs evaluations in cases of suspected sexual abuse and physical abuse and neglect. To meet accreditation requirements of the National Children's Alliance, they must have a child-friendly environment and have multiple disciplines on site. They have to be able to perform forensic interviews, do specialized medical examinations, and refer children for proper therapy, if needed.

Miller testified that most of his duties are clinical as he is the only doctor in the center. He is also trained in forensic interviewing. When a child comes in, they interview the parents first and then either he or a social worker performs a forensic interview. After the forensic interview, he performs a medical examination based on the child's statements or whatever findings he has. He decides what tests need to be done. In the end, they sit down with the parents and tell them what they think happened or did not happen as well as give recommendations as far as therapy. The center conducts about 400 evaluations per year and he conducts about half of the forensic interviews. He noted that some of the children are too young to be interviewed and thus he does about 150 forensic interviews per year. In his total career, Miller said, he has conducted approximately 700 such interviews.

Miller testified that he conducts nearly 400 physical examinations for allegations of possible sexual or physical abuse per year. In his career he testified that he has examined thousands of children's genitalia and about 1,200 specifically involving allegations of sexual abuse.

Describing his prior hospital appointments, Miller stated that, after he finished his residency in 2003, he was at Jacobi Medical Center from 2003 to 2007. He indicated that is where he was an Assistant Professor of Pediatrics for Albert Einstein Medical School.

He noted that his main responsibilities were clinical. He stated that he spent half of his time at the Jacobi Family Advocacy program, which he noted is also an associate member of the Children's Advocacy Center. So during those four years, Miller stated he spent half his time doing child abuse evaluations.

He has written one peer-reviewed article for a scientific journal and he has written a chapter on pediatrics for a book called the Ultimate Guide to Choosing a Medical Specialty.

He has also had training in the area of child abuse and neglect. Starting in medical school, he testified, he spent elective time doing child abuse. Also, throughout his pediatric residency he dealt with cases of abuse and he spent elective time during the residency doing child abuse.

Miller stated that he has been invited to speak on child abuse and neglect over 30 times at different places to teach about child abuse ranging from other hospitals in New York City, to ACS, to helping plan New York City's citywide comprehensive evaluation and treatment of child abuse and neglect training. He has been invited to Okinawa, Japan for a week to teach about child abuse and he has been to Malawi twice in the past year-and-a-half as the lead consultant to UNICEF⁴ and to the Malawi government to train doctors there about child abuse.

Miller testified he has been qualified as an expert in child abuse and neglect both in court and medically. He is board certified in child abuse pediatrics, which is a new official board certified subspecialty. He has also been qualified as an expert in courts of law including the Bronx Family Court 11 or 12 times, Bronx Supreme Court twice and courts in Rockland and Westchester once each.

⁴ United Nations Children's Fund

Miller is a member of the Bronx multi-disciplinary team on child abuse, which is an inter-agency task force that meets once every month to make sure that they are on the leading edge in what to do to protect children. He is also on the New York City Mayor's Task Force on Child Welfare and Safety. In this capacity, he helped develop training for emergency room doctors. He is a member of the Helper Society, which is a nationwide medical society for doctors involved in child abuse work. He pointed out that members have to be voted into this society based on experience and contributions to the field.

Miller also said that he is a member of the International Society for Prevention of Child Abuse and Neglect and he will be going to their meeting to present his research paper. Miller indicated that his opinions are based on his experience and based on the scientific literature which is accepted in the relevant scientific community. At this point, without objection, Miller was deemed an expert witness.

Referring at [REDACTED] medical records and his evaluation at [REDACTED] Hospital (DX 6, 26-page document, along with an additional page and the certification), Miller said he did not conduct the examination that is reported in this medical record. He was familiar with the doctor who did conduct the examination, Dr. Evelyn Shukat. At the time of the examination, she was Director of the Lincoln Child Advocacy Center. She was his predecessor in that position and she is also a pediatrician who is board certified in child abuse. Miller indicated that he is familiar with the procedure that would have been followed for the examination done in this case.

Miller testified that the records indicate that [REDACTED] was brought to the [REDACTED] Hospital emergency room on November 28, 2005, by EMS⁵ and he was accompanied by his mother. When the child was brought to the emergency room, Miller stated they

⁵ Emergency Medical Service

called Shukat, whose office is on the fourth floor. He said the records indicate that [REDACTED] and his mother were brought to the fourth floor for evaluation. Shukat, Miller said, spoke to the child alone, to ask why he was there, and if anything happened to determine what tests might be needed.

What [REDACTED] said, Miller testified, is part of the record. Shukat's notes, he said, indicate that [REDACTED] disclosed that his "stepfather" [the Respondent] had forced the stepfather's penis into the child's anus and into the child's mouth.

Miller explained that because the police, ACS and the District Attorney's office would become involved, the first interview was minimal in nature and a longer interview was scheduled for later. This is done to minimize trauma to the child. The notes, Miller said, indicate that after the interview on November 28, the team planned a full evaluation for the next day. [REDACTED] was brought back on November 29 for a full joint interview including police, lawyers, ACS, the medical team and social workers.

He said the notes indicate that Toro and Hernandez performed the interview. Toro had been there for about 25 years, so she would have had about 20 years experience and she had been a former CPS⁶ worker before that, ACS worker before that.

The court part of the interview was performed by Hernandez. The Lincoln Child Advocacy Center, he said, has an interview room with a two-way mirror, so that one person, "maybe two," can be in the room with the child while the rest of the team watches behind the mirror.

Explaining pages 22 to 25 of the medical records, Miller testified that [REDACTED] said that his stepfather had forced his penis into the child's butt. He explained that it did not say if there was full penetration. He explained that for a child the term "in" "can be a

⁶ Child Protective Services

relative term' He stated that he did not know if this meant that the penis was being rubbed back and forth in between the buttocks or if there was actual penetration of the anal sphincter

Miller explained that [REDACTED] said his stepfather put his penis in his butt about 50 times When asked about how many times his stepfather put his penis in his mouth, [REDACTED] said about 30 times The child also said that the Respondent would put lotion on each of them for lubrication [REDACTED] also said that the Respondent would make him put his penis in the Respondent's butt and also in his mouth and that this occurred over a three-year period

After the interview, Miller testified, there was a physical examination He explained that this would start like any other general pediatric examination, from head to toe looking in the throat, listening to the heart, and listening to the lungs The genital examination is saved for last It would involve an examination of the penis and scrotum as well as the buttocks to look for tears, bruises or abrasions The examination did not find any acute injuries

A DNA kit was also done, according to the notes Swabs, he said, would be taken from the mouth, anus and any other location where semen from the alleged offender might be

The diagnosis listed by Shukat, he said, was sexual abuse He explained that this was consistent with the interview and the physical examination, stating

Well, both in the scientific literature in peer reviewed medical journals over the past years and in my personal experience in the past seven years, it's not expected for there to be injuries after sexual abuse, be it anal penetration or any type of penetration There have been large studies hundreds of people, where in the cases where anal

penetration was alleged, like sometimes less than half or a quarter had any injuries

And then there are other studies that show even in cases where there are anal injuries, there is one series of 31 patients, 29 of them the injuries completely healed with no signs afterward. And these injuries can heal within a short amount of time because it's mucosal tissue. Mucosal tissue, like inside of the mouth, inside of the nose or inside of the anus heals more quickly than a cut or a scrape on your arm because of the nature of mucosal tissue.

So the scientific studies show that even in cases of penetration, you would not expect an overwhelming majority to have injuries. There are no studies that suggest that, and also in my personal experience having examined about 1,200 kids of which approximately two to three hundred have allegations of anal penetration, I have only had two kids that had anal injuries that were specific to abuse.

Miller went on to explain that one cannot predict what type of situation might cause injuries. He further asserted that the fact that this alleged abuse went on for over three years would not necessarily make one believe that there have to be injuries. Miller agreed that [REDACTED] claim that he had been anally penetrated over the past three years is consistent with the physical findings. Miller also asserted that [REDACTED] was consistent in his various interviews.

Miller also explained that the fact that [REDACTED] had taken a bath after the last incident would definitely affect the possibility of finding DNA evidence. He also noted that near the 48 hour mark post event, your odds of getting DNA drop exponentially.

Miller noted that, after the physical examination, the doctor performed the full range of tests for sexually transmitted infections. He said that the records indicate that all the tests came back normal. Miller also explained that [REDACTED] received supportive therapy to deal with the trauma of his disclosure.

On cross-examination, Miller agreed that he said that he is currently the Director of the Child Advocacy Center of Lincoln Hospital and that his center is also a member of the National Children's Alliance. Miller reaffirmed that he is on the New York City Mayor's Task Force on Child Welfare and Safety and that he has been elected as a member of Helper. The latter, he asserted, was an organization to promote research and teaching in the field of child maltreatment. Miller agreed that he lectured and consulted on many occasions.

When asked if he viewed himself as an advocate for children who have been abused, Miller said that he views himself as an advocate for the truth and if the truth helps children, then he is helping children. He said that he takes pride in trying to help the whole family get to the truth of what is going on.

Miller stated that he has testified in child abuse-related cases about 20 times. He said of these, on one occasion, he testified for the defense. He agreed that he testified on behalf of the prosecution and in Family Court and said that he did not have a choice as he was subpoenaed by those groups. He said that he was subpoenaed to appear at this proceeding.

When asked how many cases he determined to be unfounded out of the approximately 1,200 alleged child sexual abuse cases he has evaluated, Miller stated that "it depends, unfounded by whose standards, be it criminal court versus ACS versus what I can say to a good degree of medical certainty." He continued:

As a doctor, I use what I can say to a reasonable degree of medical certainty. According to the medical standard, as far as in cases of sexual abuse, because we receive a wide range of referrals, even cases where kids have not made any disclosures, I would say somewhere in the neighborhood of, I mean, 70 percent maybe on average

there seems to be a good degree of medical certainty, but I would say there is definitely on average 30 percent where I cannot say to a good degree of medical certainty that I felt the child was abused

Miller testified that, in [REDACTED] case, based on Shukat's notes, it fell within the realm of saying to a good degree of medical certainty that [REDACTED] had been sexually abused. He said this was not just based upon the child's statements but upon the forensic interview. He said that the forensic interview is not just about the words of the child but the ability of a young child in a long interview and over several days to be consistent in the child's statement and demeanor. He asserted that it was not just the statements but the full context of everything.

The "full context," he agreed, was a brief interview on one day and a follow-up interview the next day. He agreed that was the extent of [REDACTED] contact with the Child Advocacy Center in terms of its making a determination. He agreed that the interview lasted less than two hours. He agreed that, at some point, Hernandez was present but noted that the records do not indicate which part of the interview she became involved with. Miller could not say whether both people were present for the entire interview and said he needed to review the sign-in sheet. He then looked at the sign-in sheet and determined that Hernandez signed in at 11:30 and out at 1:10. He then said that although she was present for the entire period of the interview he could not tell if she was actually in the interview or if she walked into the two-way mirror observation room. He said, "It's too hard, it's difficult to indicate just from the notes."

Miller indicated that the report did not specify when the meeting with [REDACTED] started but noted that, after Hernandez' 11:30 arrival, the interviewers would have shared notes before beginning. Miller also did not know what time the meeting ended, even

though the sign-out sheet indicated that they left at 1:10, because he did not know if that was when they finished talking about the case as a team after the interview was finished. He said that it was not safe to assume that the interview lasted an hour-and-a-half but he said it certainly was not longer than that.

He agreed that looking at the notes, Sellars referred to the Respondent as her boyfriend and [REDACTED] referred to him as his stepfather.

Miller agreed that the narrative did not say that the lotion was used for lubrication and that he did not know if that was the case. He said his conclusion that the Respondent put lotion all over [REDACTED] body and not only on the leg (for treatment of poison ivy he got down South) was based on a telephone conversation he had had with Toro "yesterday." He had no notes of this conversation. He said that Toro got this information from memory. He said this was a really dramatic case and she remembered. He said that there was no physical evidence. He said he would not agree that there was no scientific evidence because "the science studies that are published about forensic interviewing techniques, the techniques that get used leading to more credible statements do have a science behind them." He conceded, however, that "there were no physical exam findings."

Miller agreed that he was not present for the interview and that he did not supervise the interview. He said he knew that Toro started the interview with open-ended questions but he conceded that he did not know "verbatim" the questions she asked. He said he knew her general methods but he did not know the exact questions.

Miller agreed that the medical evidence in this case was equally consistent with a complete lack of any physical sexual abuse. Although [REDACTED] had said that the

Respondent put his "private" into his butt about 50 times, there is nothing in the notes, Miller said, that set forth the time frame, frequency or time relationship between these occasions

Miller agreed that it was his testimony that, based on the scientific literature, there is no expectation that one would find injuries from anal penetration. He stated that there are reported "really bad" cases where there are anal injuries but he said as far as large studies "some of them go into a little detail about frequency, but there is no study that says, well, how many kids that had anal penetration 30 times or more had injuries. The studies don't get that specific."

Miller went on to say "but to make the proposition that 50 times means you have to have injuries, I need some proof of that." Miller agreed that there are cases with injuries but stated that they are the exceptions to the rule. Miller agreed that there is some subjectivity in evaluating the credibility of a child witness. He agreed that some children lie and that some children engage in make believe but he said that "[t]he forensic interviewing techniques have been shown in scientific studies to be more likely to get more credible facts and a greater amount of information." Nonetheless he conceded that "it's not truth serum." Miller acknowledged that he had testified at the Respondent's criminal trial.

On re-direct examination, Miller stated that he worked with Toro for three years. He stated that in some of the cases in which there had been anal injuries, the abuse occurred a few times. He recalled that in one of the cases he handled, a toddler had anal injuries and bruises all over the body and it was part of a combined physical and sexual abuse situation. He said that most of the time no medical treatment is required because

the injuries heal on their own within a week or two Thus he concluded that, even if there were injuries, they could have healed without scarring

Miller agreed that he has seen other cases in which children have not been able to specify the exact times when abuses occurred He said it depended on the child's age

On questioning by the Court, Miller stated that Toro still works at [REDACTED] Hospital, but in a different function

On continued re-direct examination, Miller agreed that there were cases where he did not make a diagnosis of sexual abuse When asked what factors might lead him to make that diagnosis he said that "sometimes we don't find the child credible" He went on to state, "Any child can lie for a short amount of time, but when subjected to a full forensic interview, at the end of that interview there is a certain percentage where I just don't feel sure that what they are saying is true, or I just completely don't believe them" When asked what the decision in [REDACTED] case was based on, Miller responded, "It was Dr Shukat [who] wrote the diagnosis of sexual abuse based on the child's statements and demeanor and consistency between the two days"

Sergeant Wilbert Crawley

Crawley has been employed with the Department for approximately 15 years, has been in the rank of sergeant for about seven years, and has been assigned to IAB Group 41 for about six years At Group 41, he conducts investigations of police officers accused of misconduct and corruption He indicated that he was assigned a callout investigation on November 28, 2005, in which the Respondent was accused of molesting a young boy Crawley recalled that the young boy's first name was [REDACTED] but did not

recall his last name

When Crawley was initially assigned the case, he was told to respond to PSA⁷ 7 to conduct the initial interviews and investigation of the allegation. Although the victim was supposed to be at PSA 7, Crawley discovered upon his arrival at that location, that the victim was at [REDACTED] Hospital. With regard to how the victim had arrived at [REDACTED] hospital, Crawley stated that he was given very general information. He explained that a unit from PSA 7 went to the housing development in response to a 911 call. The unit came into contact with the victim and "somehow the victim came to or went to PSA 7, then was transported to [REDACTED] Hospital but it was never confirmed. It was just general talk." Crawley agreed that he responded to [REDACTED] Hospital at that point. Upon his arrival, he encountered two women exiting an elevator and staring at him as he was waiting for the elevator at the elevator bank. He did not recall if he asked the women if they were going to the fourth floor or if one of them asked him which specific floor he was supposed to go to, but he became aware that one of the women was Sellars who he understood was the mother of the victim.

According to Crawley, Sellars told him that she needed to take a cigarette break. He asked her if he could accompany her and they went on a cigarette break together. Crawley explained to Sellars that they were conducting the initial investigation and the questions being asked may be considered intrusive and of a sexual nature, but they needed to gather the information since they were not there when the incident occurred. Crawley described Sellars' demeanor at the time as "upset, agitated." He said he attempted to calm her down a little because the investigation was going to entail "a lot of different things." He agreed that she was cooperative at that time.

⁷ Police Service Area

Crawley indicated that Sellars explained the actual allegations at that time, but in very general terms. He said that he cautioned her that he did not 'really want to speak about it downstairs' and told her she could give them the details when she returned upstairs. He said that, at that time, she was speaking in "very broken sentences" and was not really communicating all the details of what happened.

Subsequently, a formal interview of Sellars was conducted, in which Crawley was also present. He agreed that Sellars indicated during that interview that she had observed an incident between [REDACTED] and the Respondent and she drew a diagram of the apartment indicating where the incident had taken place (DX 7, photocopy of diagram). When shown DX 7, Crawley recognized the document as a "rough description of the layout of the house where certain walls and room were" and it contained Sellars' signature and date on it. He indicated that this was the diagram that Sellars had drawn during the course of the interview and she had signed and dated it at that time. Crawley stated:

[Sellars] stated that [the Respondent and [REDACTED] were in the living room. She claimed that when she exited her bedroom, which was further down the hall, that she walked along the wall and the first thing she noticed was [the Respondent's] leg straddling the wall. And she also said that his arm was leaning on the wall. She had to walk closer to see [REDACTED] and to see what was going on.

She said that [REDACTED] was on the other side of the wall, and once she got closer, she said that she saw them both.

According to Sellars, [REDACTED] was in a standing position. Crawley said he "remember[ed] exactly" that Sellars said [REDACTED] was kissing the Respondent's nipple.

Crawley indicated that at the bottom of the diagram (DX 7), there is writing that states 'my room and me,' with an arrow that shows the direction that Sellars exited her bedroom and walked through the hallway towards the living room entrance. According

to Crawley Sellars stated that she walked against the outer wall of the hallway He stated

She was very clear on her description on how she walked, and we were trying to logically figure out whether or not she was really able to see what she said she saw, whether or not anything was obstructing her view, and since none of us, or at least myself, had not been to the apartment, we needed to know in very general terms what the apartment may look like

Crawley agreed that Sellars wrote "Cliff" at the top of the drawing to indicate the general area in which the Respondent was located He also noted that Sellars wrote a word on the drawing that appeared to be "son" but it was not very clear on the copy he received (DX 7), but it did indicate the general area that Sellars claimed [REDACTED] was standing Crawley explained that the initials "LR" on the drawing indicated the living room, as Sellars was asked to label the rooms He was not able to explain what the initials "DC" on the drawing signified He postulated that they could have been instructing Sellars to label whether the doors were opened and closed, but he could not remember at this point in time

Crawley indicated that during Sellars interview, she said she called her cousin on the night of the incident, but Crawley did not recall the cousin's name He further noted that Sellars said that the cousin's boyfriend spoke to and met with the Respondent that night and that "they took a drive on Park Avenue somewhere" Crawley affirmed that at least one attempt was made to locate Sellars' cousin and her boyfriend Crawley had responded to the 32 Precinct, around [REDACTED] Boulevard and [REDACTED], to an apartment that "may have been suggested that they resided at" Crawley clarified that he was not the case officer at the time, he was the "assisting accompanying officer"

Crawley denied ever personally being able to locate the two individuals nor did he believe that they were ever interviewed 'face-to-face' as part of the investigation

Crawley indicated that he participated in the official Department interview of the Respondent on January 19, 2010. Also present at the interview were Detective Corbett, the Assistant Department Advocate (Advocate) Lisa McFadden, and the Respondent's attorney Peter Brill. Crawley indicated that during the interview, the Respondent was questioned regarding his relationship with Sellars whom Crawley believed the Respondent said he met in 2000. According to Crawley, the Respondent first said that he encountered Sellars in a residential building while he was in uniform, but the Respondent then "corrected it" and stated that he met her in a commercial area of Manhattan. Crawley noted that he did not know where the Respondent was assigned to at that time.

Crawley agreed that the Respondent indicated during the course of the interview that he believed Sellars had issues with drugs, which the Respondent had characterized as an addiction that he was trying to help Sellars with. According to Crawley, the Respondent believed that Sellars was using marijuana, but the Respondent had opined that she was using harder drugs, although he never stated which ones. The Respondent had expressed this belief based on Sellars' behavior and demeanor, where she "used to do disappearing acts sometimes when he would visit" and she was sometimes withdrawn. Crawley believed that the Respondent had indicated that he had twice observed her in possession of marijuana, one time in 2003 and the other in 2004. Crawley described one incident in which the Respondent said he found marijuana in Sellars' sugar jar in her apartment at [REDACTED]. Regarding that incident, Crawley said that the Respondent had expressed concern that [REDACTED] might find the marijuana.

Crawley believed that during another incident, "[t]hey were outside because [the Respondent] claimed that [Sellars] dropped the marijuana in a sewer grating at the time that she was in possession of it. Crawley indicated that he was not aware of the Respondent ever reporting Sellars' drug possession to any law enforcement agency, nor did he report her drug use to ACS or any other child protective agency.

Crawley agreed that during the course of the official Department interview, the Respondent did indicate that he had touched [REDACTED] body. Regarding the areas that were touched, Crawley stated, "There was one, one incident where [the Respondent] stated the lower part of [REDACTED] his leg and his buttocks and the other time he stated that he had touched [REDACTED] in his pelvis area while he was trimming his pubic hair." Crawley stated that he did not recall the exact date when the Respondent trimmed [REDACTED] pubic hair but he believed that the Respondent referenced that [REDACTED] was eight years old at the time. After reviewing pages 81 and 82 of the transcript of the interview, Crawley stated that the trimming occurred in mid-2004. According to Crawley, the Respondent stated that he touched [REDACTED] legs and buttocks while he applied lotion that he had purchased.

When shown DX 5A and 5B, Crawley identified them as two photographs that he believed were shown to the Respondent during his official Department interview. Crawley agreed that the Respondent confirmed that the photographs were of himself and [REDACTED]. As to the circumstances under which the photographs were taken, Crawley stated that the Respondent said he entered the bathroom after [REDACTED] had taken a shower and [REDACTED] returned to the bathroom. The Respondent was also cutting either his own hair or [REDACTED] hair. Sellars started taking pictures with a camera she had while the Respondent and [REDACTED] were in the bathroom. Crawley said, "[The Respondent] also stated it was 20

minutes of kind of playing back and forth and that the playing was basically the mother wanting to take these pictures "

When Crawley was asked if the Respondent was asked if he objected to the photographs being taken, he said that he did not remember if the Respondent stated that during his official Department interview or during the Family Court trial After refreshing his memory by reviewing page 36 of the official Department interview Crawley stated that the Respondent did not state that he objected to the photographs being taken, rather, "[h]e said he was clowning around "

Crawley acknowledged that the Respondent was asked questions regarding the incident on November 27, 2005 According to Crawley, the Respondent had indicated that he had sex with Sellars on that day, that he had wrapped a towel around himself after having sex, and that he had wrapped the towel around himself before he took a shower The Respondent had indicated that the towel was kept on the bedroom door behind the door, and that he had returned it to the same location after he took a shower Crawley believed that the Respondent described the towel as being white with stripes

On cross-examination, Crawley agreed that during the official Department interview he determined that the Respondent had used that one towel to wipe himself after having sex on the day of the incident He denied ruling out all of the other towels that the Respondent used at any other time He agreed that it was possible that the Respondent had used another towel after having sex with Sellars on another day

Dr. Charles Heller

Heller has a bachelor's degree, a master's degree and a Ph.D. in psychology. He is a licensed psychologist in New York, New Jersey and several other states. He is also a licensed marriage and family therapist. He did his doctoral dissertation on criminal behavior, interviewing people who were incarcerated for murder, sexual assault and other FBI index crimes.

He said he served for five years directing mental and alcohol treatment for the Cherokee Nation of Oklahoma under a grant of the Indian Health Service. He also worked for three years with a large foster care agency in Brooklyn, working with children, teenagers, and foster parents.

He was director of a clinic for the multi-disabled in Dutchess County for several years and he has been in private practice in various places as well. He currently has practices in Rockland County, Manhattan, and Orange County. He is also the forensic consultant to the Rockland County courts. He also consults to the mental health agency there. He has had a license to be a psychologist in New York since 1981.

Heller testified that he also has a certificate in family forensics from Washington Square Institute and a certificate in clinical training. He did an internship in the State of New Jersey Department of Human Services for a year where he worked in the psychiatric hospital outpatient clinics. His current employment consists of his forensic practice and his consulting with the Rockland County Department of Mental Health. He also receives referrals to Family Courts in Orange, Rockland, and Westchester Counties as well as in New York City. He also goes to various jails when he is requested to evaluate people. Additionally, he is a court-appointed forensic evaluator for juvenile delinquency, criminal

behavior and custody evaluations

He noted that every evaluation is different but he indicated that he will evaluate the children, parents and collaterals to be as thorough as possible

Heller said he also has a small psycho-therapy practice which he limits to 10 or 15 clients a week. From early in his career, he has worked with children who were sexually abuse. Over the course of 30 years, he has handled probably several hundred cases that he has seen or supervised.

Heller has testified in court. He has given testimony as an evaluator in child sex abuse cases where he has given recommendations about visitation. He has testified in several criminal cases as well. He has been hired by both the defense and prosecution. He has also taught at various institutions.

With regard to his specific experience with children who were the alleged victims of sexual abuse, Heller said that he worked with foster children in Brooklyn and worked for the Cherokee Nation. He supervised staff in how to interview these children and he has treated them in his private practice. He has also encountered such children through referrals to his practice and in his capacity as clinical director in a Dutchess County clinic for multi-disabled individuals, many of the children there who are both emotionally and mentally retarded have been sexually abused. He said he has been qualified as an expert in child sexual abuse about 15 or 20 times. He said he has also done about 100 evaluations for courts in cases involving child sexual abuse in which he has made recommendations to the court.

On the issue of delayed disclosure in child abuse and rape cases, Heller said that he has many years of clinical experience. He also has continuing education on that as

well as coursework during his master's degree and Ph.D. Recently, he has received a certificate in family forensics which involves coursework for a two-year period in how to interview, evaluate, assess and treat children who have been sexually abused and also have delayed disclosure or nondisclosure.

On *voir dire*, Heller agreed that he had been qualified as an expert in various courts. He said that he has been qualified as an expert in child sexual abuse in Westchester County Criminal Court, Bronx Criminal Court, and Kings County Criminal Court. At this point Heller was deemed an expert on consent.

On direct examination, Heller agreed that he has not reviewed the case file in this matter, nor has he met or interviewed any of the witnesses, victim or other participants in the case. He has been personally involved in cases of child sexual abuse where the children delayed disclosure. He said that the research shows that many children don't disclose or disclose years later. He said that adults who disclose childhood sexual abuse do so maybe two thirds of the time. He stated:

The factors that cause nondisclosure or delayed disclosure are there I guess they include a close relationship between the perpetrator and the victim, there's also a fear element a fear of retaliation, there's embarrassment on the part of the child. There's feeling guilty, guilt is another one of them. Concern with consequences that could happen and self-blame is a big part of that and we also have phenomenon of grooming, which is a process whereby the child becomes very familiar with the adult and the adult kind of grooms the child to accept closer and closer emotional and physical contact.

He said that his recollection is that 66% of adults that were abused as children waited until they were adults to disclose that. He said these were verified cases of abuse which he said is typically when the person admits that they did victimize the child.

Regarding the victim, Heller said sometimes it can be years, sometime decades before the person feels comfortable about sharing his or her experience and disclosing that he or she had been the victim of sexual abuse

He said a reason for nondisclosure might be the close relationship that the abuser has as a part of the family structure, someone the family needs in some way He also said children are usually told that it is a secret and they should not share it or something bad could happen so there is a fear element of consequences

He said that children have been told that family members would be killed or that they would be killed or someone would go to jail He also testified that children are afraid of the criminal justice system getting involved, as well as adults outside the family whether it be teachers police or the court It is in the grown up area and very uncomfortable for them

He said that children, depending on age, know there are private parts of the body that are personal and should not be touched There is a lot of shame and they feel somehow they are responsible for the abuse He said that sometimes the victims suppress the feelings and do not allow themselves to remember the sexual abuse He noted that this is called disassociation or a dissociative state, "it's almost like having amnesia" He said, "Until it's triggered by something and the memory comes back and the trauma returns, the feeling of being victimized and post-traumatic stress" He said there can be anger or rage

He said he has seen cases where the perpetrator has provided financial support for the family and children have been afraid to disclose because they did not want to remove that He also said that, depending on the age, homosexual abuse can cause more shame

Heller noted that the more important the abuser is in the family structure that would decrease the likelihood of disclosure

With regard to drug use, Heller stated that if the drug abuse was apparent to the child and if it affected the parental capacity to take care of the child, that would make the child more dependent on the other adult in the home. If that person (the other adult) was the abuser, the child would feel fragile and that would keep the child from disclosing.

Heller said he had seen cases where the abuse, involving anal and oral penetration, had gone on for a period of over three years without the child disclosing that fact. He said that, in a family system where there is child abuse going on, it is very difficult to tell that just by observing the parties in the family. People, he said, tend to wear masks and suppress this due to the secrecy and shame. They act happy.

He stated that there is a process of grooming where, even pre-abuse, the perpetrator develops a close emotional relationship with the child. This is based on other activities such as sporting events, shopping or helping the child with school where there is a closeness in which the child feels that his needs are being met.

When asked about the impact of an abuser who is a member of law enforcement, Heller stated that it depends on the situation but a child typically would be afraid of the criminal justice system and would see a police officer as a powerful authority figure that people would tend to believe as opposed to a child.

Explaining grooming, Heller said that it starts out very subtle with friendliness trying to meet the child's emotional needs, to make the child feel important and happy around the person. It progresses gradually to reduction in the boundaries between the two. In terms of physical contact, a person might, for example, help the child dress or put

on a bathing suit That would continue for a while and they might see each other naked He said, 'That is a common practice in grooming, take the taboo away from being naked together' He explained that this becomes normal behavior, that there is nothing really wrong with it and he trusts the adult This would he said, inhibit disclosure

He has, he said, also seen cases where there are multiple children who an abuser has access to but only one child is abused He said this occurs when the perpetrator has a preference for one child or that child might be more vulnerable emotionally The child might be a 'safer' victim for him

Heller indicated that he has also seen cases where the child is unconvincing He explained that this is because there is a lot of shame, a lot of disorganized thinking in the victim when the victim has to first come forward Afterward, there is also disassociation, which is a natural psychological defense which keeps the victim from remembering everything He further stated that it is not unusual for a child to not disclose everything initially

He said children might have an apprehension of testifying because it is the adult world and very frightening for a child to talk in front of adults about private things Asked if having testified previously in a case where there was a not guilty verdict would affect the child's ability to testify again, Heller said that the child would have a feeling that people did not believe him and that creates embarrassment and a negative attitude about testimony

He also said that testifying brings back the initial trauma, it becomes less suppressed and it can cause more depression, anger, difficulty functioning and the trial experience becomes part of the whole traumatic experience "

Heller indicated that his own testimony was accurate to a reasonable degree of psychological certainty

On cross-examination, Heller testified that some children are not honest and make false allegations. He agreed that some children can be susceptible to coaching that leads them to make false allegations. He acknowledged that he has seen instances where children have been put up to make false allegations by a parent or parental figure.

Heller stated that the estimate of the number of children who have been abused is anywhere from 10 to 30 percent. He stated that from what he has seen, the numbers who come forward is less than half. The numbers who come forward in their youth or early teenage years is smaller.

With regard to verification (that sexual abuse has actually occurred), Heller said there is a continuum. He stated

[S]ometimes a child makes an allegation of abuse and there is no physical evidence, but there is detail, there is more, another level would be greater detail and that would involve a description of frequency and that kind of thing. Then you've got emotional issues in the child that is also part of the abuse that can be seen in school or home, which come forward. Issues relating to the trauma or a numbing kind of thing where they don't feel and they just kind of go through years of life. There is also verifying in terms of physical trauma to the body, tears and that kind of thing experts in that field know about. And then there is verification in terms of the perpetrator [him]self either making a plea to that crime or being convicted and that is considered to be a strong verification of it or admitted guilt so it's a range.

Describing the effects of trauma, Heller said that people in the child welfare field believe there are certain red flags in terms of behavior. But he agreed that doing poorly or acting out in school is not a specific red flag for sexual abuse. Heller again agreed.

that, in his practice and in the literature, he has come across situations where false allegations of sexual abuse have been made. He said this is called "secondary gain". Heller explained secondary gain by giving the example of a child who might want to take attention off of his poor behavior by claiming someone abused him. It also could be revenge for some emotional or other slight. He agreed that it was possible that where the parental figure seems to have abandoned the child there might be a secondary gain reaction.

Heller described secondary gain as an emotional motive to meet a certain need in a child. He said it was possible that a child might make a false allegation to get greater or more loving attention from the other parent but he has not seen too much of that.

Heller agreed that the initial stages of grooming would match up very closely to normal parenting behavior. He said it is a form of emotional bonding. Heller indicated that parental physical contact with a child's genital area would raise a red flag depending on the age and the situation. He indicated that the same was true with a parent being naked with a child.

Heller agreed that while he gave a number of reasons why a child might give an incomplete or unconvincing account of sexual abuse, it would be fair to say that another reason for this might be that they were making up the account.

Heller agreed that everything he said was hypothetical because he did not review any of the specific facts that had to do with this case. He also agreed that he did not know if the victim in this case had any fear of the Respondent, shame about his acts, self-blame, post-traumatic stress, rage or any of the other factors that might go into a feeling of delayed disclosure.

On re-direct examination, Heller said that a determination that an allegation is false might be made because the child recants. He said the research shows that the worse the sexual abuse is, the lower the level of recantation. As to other reasons allegations are determined to be false, Heller stated:

Well, when I do an evaluation I interview everyone involved. I do some psychological testing, I look at the child and as they are describing the abuse I look at their affect, I look at their defensive structure to see if they may be suppressing. It's kind of a complex evaluation but there are times when I've said there was no -- it was my opinion there was no abuse even though there was no recantation.

He stated that he has seen some pretty bad initial interviews that were very focused and believing. He agreed that these were later determined to be false because the initial interview was so tainted.

Nicole Sellars

Sellars testified that she first met the Respondent in 2000, when she was residing at [REDACTED] Avenue in [REDACTED]. While the Respondent was on duty, Sellars was coming out of a building and was asked by him and his partner for identification to verify that she lived in the building. She knew that the Respondent was on duty because of his gun and badge. She stated that at the time, there was a lot of drug dealing and drug activity so police officers frequently came into the building. After the first meeting, she met the Respondent the next day and they developed a personal relationship.

When she first met the Respondent, she resided with her mother, but subsequently stayed with the Respondent at his roommate Ted Campbell's home at [REDACTED] Road in the [REDACTED] until 2004. Then, she moved to a shelter on [REDACTED] in the Bronx.

from February to December 2004, after which she moved to [REDACTED] in [REDACTED]
[REDACTED]

Sellars stated that, as of 2000, she had one child, [REDACTED] whose date of birth was

[REDACTED] During the time, when Sellars stayed in Campbell's home with the Respondent, [REDACTED] sometimes also stayed there but at other times he stayed with Sellars mother When Sellars moved into [REDACTED] she lived there with [REDACTED] and the Respondent, whom she said lived there full-time except when they had a disagreement or broke up for a short period of time She noted that the Respondent kept personal belongings at the residence in [REDACTED]

Sellars said that [REDACTED] was about seven years old when she first began her relationship with the Respondent and he was ten years old when they moved into [REDACTED] in 2004 At that time, [REDACTED] biological father was incarcerated in South Carolina She said that the Respondent first met [REDACTED] a couple of weeks or a month after the start of their relationship and "he treated him like a son "

In the summer of 2001, [REDACTED] was eight years old Sellars was residing in Manhattan on [REDACTED] and was involved in a relationship with the Respondent During that time, [REDACTED]'s aunt took him to Virginia to spend two weeks with his uncle and aunt, on his father s side of the family Sellars said that she was not speaking to [REDACTED] on a regular basis, but when she did, he complained about not eating properly and said that he wanted to come home because he was homesick Sellars could not contact the aunt who brought him to Virginia and she worried that "maybe they [were] trying to kidnap him for his biological father "

Sellars said that, at that time, the Respondent was on military duty and was

scheduled to go to Virginia. The Respondent advised her to go to Family Court to place a petition for the aunt to bring [REDACTED] back at a certain date and time. Sellars did so and the Court gave the aunt the date and time that [REDACTED] was to be returned, and he was brought back at that particular time. Upon [REDACTED] return, Sellars said that he had "scars and bite marks [that] looked like chicken pox and poison ivy all over his body from head to toe. She said that she did not know offhand what his condition was. She took him to the doctor who was not able to determine the exact cause because at that point, the bite marks had all dried up.

Sellars said that the Respondent informed her that he "could make some cream with some kind [of] lotions and stuff like that put together to dry it out and take away the marks," which she agreed to let him do. She said that the first time, the Respondent put [REDACTED] in the bathtub and applied some oatmeal to exfoliate the dead skin. Then, he mixed some cream and lotion together to "take away the marks and bites on the body." Sellars said that the marks were located on [REDACTED]'s arms, legs, buttocks, feet, and "in between his legs under the – on the private area." Sellars said that the Respondent applied the lotion after [REDACTED] took his nightly bath. Although she was not sure of the exact number of times that the lotion was applied, she said that it occurred within a week. She denied always being present when the Respondent applied the lotion, explaining that she was in another room or they were in the bathroom or maybe she went to the store.

Sellars denied that the lotion was always applied in the bathroom of Campbell's residence. Sometimes, the Respondent applied the lotion in Campbell's living room if the bathroom was occupied that night. When asked by the Court, Sellars clarified that the residence was at [REDACTED]. Sellars said that she was not exactly sure how

long it would take the Respondent to apply the lotion to [REDACTED] body, but stated that "it wouldn't take that long." She then estimated that it took between five and ten minutes. She noted that [REDACTED] was not clothed while the lotion was being applied, as this took place after he exited the tub.

When shown a sheet of paper displaying eight photographs (DX 8A, black and white pictures, DX 8B, same pictures in color), Sellars recognized them as photographs of [REDACTED] taken by the Respondent when [REDACTED] returned from Virginia, which showed where the marks were on [REDACTED] body. She agreed that they accurately reflected how [REDACTED] appeared when he returned from Virginia and agreed that these were the same markings that she earlier testified about.

With regard to DX 8A, Sellars described the various parts of her son's body that were depicted in the photographs. In a photograph marked A1, [REDACTED] penis and thigh showed the markings that were on his thighs and "on the head area of his groin." Other photographs depicted [REDACTED] leg, on which the markings also appeared (A2), also [REDACTED] leg on which there were marks and a cut (A3), his arms, stomach, and chest, all of which had the markings (A4), his full body with the markings (A5), his ankle and foot with the markings (A6), both of his legs with the markings and scar (A7), and his back area with scars on his buttocks (A8). Sellars said that, to her understanding, the Respondent applied the lotion on [REDACTED]'s whole body "from head to toe," including his genital and buttock areas.

Sellars agreed that there came a time when [REDACTED] was having trouble with his pubic hairs, when he was about eight-and-a-half almost nine years old. She explained that he started growing pubic and underarm hairs and she took him to a doctor because of

the bad odor under his arms. She said that the doctors "thought his hormones might have been off balance," but after they performed tests the results came back normal. Sellars denied that the doctor recommended anything regarding his hair growth, but she decided to groom him by cutting his pubic and underarm hairs. She stated doing so because "it was growing so much and he complained about it." She cut [REDACTED] hair a couple of times but he had an erection so they both felt uncomfortable at that point. She then discussed the situation with the Respondent, who said that he would cut [REDACTED] hair if it needed to be cut. She noted that neither she nor the Respondent suggested that the Respondent should be the one to do the cutting, stating "It was neither. It was just talked about and it just came up on the subject and we just agreed on it."

Sellars said that when the issue of cutting [REDACTED] pubic hair arose, she was staying at Campbell's home with the Respondent. She initially cut [REDACTED] pubic hair in the bathroom, which was the same room the Respondent utilized when cutting [REDACTED] pubic hair. She said she was not sure if the door was open or closed when the Respondent was cutting the hair, but she denied always being present when he was doing so. Sellars said she was not sure how many times the Respondent cut [REDACTED] pubic hairs, although it was more than once. She noted that [REDACTED] was unclothed while the Respondent cut his pubic hair.

Sellars indicated that when she began her relationship with the Respondent in 2000, she was using marijuana "just about every day" and the Respondent was aware of this drug use because there were a couple of times when he found it. She indicated that they would speak about it. During one incident, she was smoking in the bathroom and afterward did not throw away the clip, she placed it underneath the bathroom rug. She

said that when the Respondent came into the bathroom to shave, he moved the bathroom rug and the clip was underneath that rug During another incident, she believed that the Respondent found a bag of marijuana in the house On other occasions, the Respondent "might have smelled it on [her] but a majority of the time it was always him finding a clip " Sellars agreed that the Respondent expressed concern to her regarding her drug use and he spoke to her about stopping During those occasions on which the Respondent found her drugs or drug paraphernalia, Sellars was staying in Campbell's home at [REDACTED]

Sellars agreed that there was an instance when the Respondent found drugs or drug paraphernalia when she was residing in the [REDACTED] Houses, there may have been another instance but she could only recall one with certainty That incident involved the sugar jar That day, she went ice skating with [REDACTED] and the Respondent's children and the Respondent was home by himself She kept marijuana in a sugar jar over the sink in the kitchen and the Respondent found it there She indicated that the Respondent expressed concern when he found it She stated, "We talked about how we went through this before about me smoking the marijuana I said I was going to stop but I didn't That was basically it He was upset because I said I was going to stop and I didn't stop "

Sellars indicated that the Respondent had expressed concern about the fact that he was a police officer She said that he told her

It wasn't good for him to be around it or to be in the house He came home with the conclusion that I could only keep two dime bags in the house for if the cops came in or something like that was to happen and that he must know where I did keep the two bags at

Sellars stated that in November 2005, she was living in [REDACTED]

Before November she and the Respondent had a disagreement so he moved some of his belongings out But in November 2005, the Respondent was still staying with her, as was [REDACTED]

[REDACTED] She said that the Respondent stayed every night in her apartment, unless he went home on the weekends to [REDACTED] or [REDACTED] although she did not remember exactly where he lived If the Respondent had his children, who lived in [REDACTED] he would then stay in Campbell's home with them As far as she knew, the Respondent did not maintain any other residences in the city

Sellars indicated that her relationship with the Respondent was "okay" during the Thanksgiving weekend of 2005, stating, "At that point we were trying to work on our affection, spending more time with each other" That Thanksgiving, Sellars was at her mother's home The Advocate asked the Court to take judicial notice that Thanksgiving that year fell on November 24, as per the law diary calendar On the day after Thanksgiving, Sellars had the Respondent's two children, [REDACTED] his nephew and his great nephew at her home, and they stayed until Sunday afternoon Everyone left at different times on Sunday afternoon, but the last child left at about 5:00 p m or 5:30 p m That Sunday, Sellars said she went with the Respondent to drop his sister off at the George Washington Bridge and Sellars went to her mother's home to get some food She and the Respondent took his two children home and then they returned home

Upon their return home, the Respondent, his great nephew, and [REDACTED] wanted to play with the Xbox, but she asked the Respondent to lay down with her until she fell asleep and to let the boys play with the Xbox She fell asleep approximately 4:30 p m in her bedroom At that time, her bedroom door was open and there were still two children in her home [REDACTED] She said that between 5:00 and 5:30 p m [REDACTED]

went into her bedroom to say goodbye before he left. She stated, "I heard him come in my room and I turned my head and seen the clock that is how I knew he was leaving." Afterward, she went back to sleep. Since she was asleep, she did not know where the Respondent was at that time, but he was in the apartment with [REDACTED].

Sellars said that she woke up at precisely 7:00 p.m. because it was hot in the room, stating

so I automatically look at the clock and I say to myself I got to get up it's getting late to cook. When I got out of the bed my room door is closed so I open up the room door and I was just standing there because it was very quiet in the house so I look to my left to see if I see the light from [REDACTED] TV on the wall, the shadow I didn't see any light in his room. I looked to my right I see a back and forth motion shadow on the wall.

I then proceed to walk out the bedroom and go down the hall. As I am getting closer I come out the room I see [the Respondent] masturbating. I walk up to [the Respondent] after I get to [the Respondent] I see [REDACTED] up against the wall also masturbating and sucking on [the Respondent's] left nipple.

Sellars stated that, at that time, the Respondent was wearing burgundy pajama pants and [REDACTED] wore blue sweat shorts, but both had their penises exposed. She said that [REDACTED] had his shorts pulled down a little bit over his waist." She agreed that when she first came out of her bedroom, she saw a shadow that was "going back and forth." She thought, at one point, that someone was hanging something up on the wall, but there was nothing on the wall or there was never anything hung on that wall in the location where she saw that motion. She stated, "[S]o it kind of threw me off so I said to myself is he masturbating but why would he be in the hallway masturbating so it was a back and forth motion that I was seeing in the shadow." She said that, although she did not immediately identify the shadow as being the Respondent, she could clearly see down the hall as she

had a view of the 'whole way down the hallway

She denied initially seeing [REDACTED] and the Respondent as she was approaching because [REDACTED] was up against the wall, which was around the corner [REDACTED] had his back facing the Respondent and the Respondent was facing [REDACTED] with his left arm on the wall She said that [REDACTED] was "sucking on [the Respondent's] left nipple and he was masturbating and [REDACTED] was masturbating " She agreed that she was able to determine if the Respondent ejaculated, but stated that he did not she did not know if [REDACTED] ejaculated When she saw the Respondent and [REDACTED] she said, "What the fuck is going on?" She said that, in response, "[REDACTED] automatically went off [the Respondent's] arm and went to the room, [the Respondent] put his penis back in his pants He had a look on his face like he caught me doing something wrong

Sellars said that she made a U-turn and walked towards her bedroom, at which point, the Respondent said, "It's not what it looks like " and he walked back into the living room Sellars said that she then turned around and walked to the living room, where she heard the Respondent tell [REDACTED] as she was approaching, 'If she asks you what happened " Before the Respondent could finish his thought, Sellars stood in front of [REDACTED] and told the Respondent to get up and leave She said that she then took [REDACTED] by the hand into his bedroom The Respondent asked Sellars where he should go at that point and she told him that she did not care and he had to get out of her house When the Respondent asked, she told him that he could take his things if he wanted to and she took [REDACTED] into his bedroom

Sellars said that, at that time, [REDACTED] was scared and crying When she brought him into his bedroom, she gave him a kiss and told him that everything was going to be

okay She stated that when she first kissed him "the smell was horrible, it smelled like sex" She explained that earlier that Sunday afternoon, she and the Respondent "did have intimacy, [they] had oral sex and [REDACTED] smelt like [her]" She agreed that the Respondent performed oral sex on her earlier that day and she recognized that smell when she kissed [REDACTED]

After that Sellars said that she made a phone call She said that she was "really numb" at that point While the Respondent was packing his items, Sellars got dressed and put [REDACTED] in the bathroom to calm him down She "told him to sit and let the water run on his body" At that time the Respondent had one bag packed to leave and a second bag that was inside the doorway of Sellars' apartment After she made her telephone call, she felt that the Respondent was moving too slowly so she grabbed the second bag, took it downstairs to the parking lot where his car was parked, dropped the bag in front of him retrieved her keys from him, and went around to the front of the building She then went upstairs to the Respondent's aunt's home, obtained \$20 from her, and came back downstairs to check on [REDACTED]

When asked why she placed [REDACTED] in the bathtub to calm him down, Sellars explained, "This is what calms me down and at that time that's the only thing I knew to do and I didn't want him to have easy access to get to [the Respondent]" With regard to [REDACTED] emotional state, she said that he was scared because Sellars' voice was so low When she took him to the bathroom, [REDACTED] told her, "Mommy don't do nothing," to which she replied, "I am not going to do anything We are going to do it the right way With regard to her own emotional condition, Sellars said, "I can't explain it I was like out of body experience, I was really numb"

Sellars agreed that the Respondent was still in the apartment after she put [REDACTED] in the bathroom. After she went downstairs, she took her keys from him and all of his belongings were removed from the house at that time. The Respondent then entered his car and left, but Sellars did not know where he went. She said that the Respondent had another set of keys for the top lock and he had the card to make the top key, but, to her knowledge, he did not have a key for the bottom lock.

Sellars said that before she went outside, she had called the Respondent's aunt to borrow \$20. Once outside, she called her cousin [REDACTED] to come over so she could apprise her of the incident. Later that night, she also spoke with [REDACTED]'s husband, but her cousin [REDACTED] was the only person whom she called and spoke with about what had happened.

Sellars said that after she came inside and went upstairs, she then went to purchase a bag of marijuana, a pack of Newport cigarettes, and a bottle of brandy across the street at the next apartment complex. About ten minutes after returning to her apartment, Sellars' cousin [REDACTED] came over. At that time, [REDACTED] was in his room. She was not sure if she took [REDACTED] out of the bathroom before she went to the store, but she did take him out of the bathroom as he did not get out of that room on his own.

When her cousin arrived, Sellars said that she tried to smoke the marijuana but she could not. She called [REDACTED]'s husband to tell him what had happened and he informed her that he would come over. Sellars then lay on the couch. She agreed that [REDACTED] was still in the bedroom during that time. Sellars and [REDACTED] went into the bedroom to talk to [REDACTED]. [REDACTED] asked [REDACTED] what had happened, but Sellars said [REDACTED] was very scared to talk so [REDACTED] gave him a composition book and told him whatever

he can't tell us to write down in the book ' They then left him alone in the room with the book and they went into the living room Sellars said that after [REDACTED] was done he brought them the book

Sellars agreed that [REDACTED] s husband did come over He asked Sellars what happened and she told him He then called the Respondent because he wanted to speak to him The Respondent agreed to meet [REDACTED] s husband, and they met outside While they were speaking, the Respondent called Sellars on her cell phone or the house phone She stated, "He was telling me it's not what I saw I told him I love him, he needs help and that was basically it" Sellars said that the Respondent told her that he was looking at a ' hair bump on [REDACTED] pubic hair," but she told him that was not what she saw, as she did not see the Respondent with his head 'down there'

Sellars said that she did not ask [REDACTED] too many questions that night, but [REDACTED] spoke with him "a little bit" Sellars said that she was present during their conversation At that point, [REDACTED] did not discuss what happened [REDACTED] was comforting him letting him know that it was not his fault and that everything would be okay Sellars agreed that [REDACTED] wrote in the notebook about what happened between him and the Respondent, but she did not discuss the contents of that notebook with him that night She denied that there was any further activity that night

The next day, Sellars called her mother and sisters to let them know what happened Once everyone arrived at the house and Sellars told them what happened she called the police She explained that she called her mother and sisters because she has a small family and needed their support Sellars said that they questioned [REDACTED] about what happened "to some degree" She was not always present in the room with them because

she said she was not 'ready to hear certain things ' Sellars said that [REDACTED] told one of her sisters that when the Respondent ejaculated, he would use either his towel or [REDACTED] towel to wipe himself or [REDACTED]. When asked if she was present when he said this Sellars stated that at some point, she walked in and out of the room. When [REDACTED] spoke about certain things, she walked out of the room. Additionally, [REDACTED] spoke about oral sex being performed by both parties and the Respondent rubbing his penis on [REDACTED] anus.

With regard to the time frame, Sellars said that [REDACTED] "wasn't too good as far as telling [her] or letting [her] know exactly when it happened. He would say last week or a couple days ago but he couldn't pinpoint it." She stated that [REDACTED] said that these acts began upon his return from Virginia, with the Respondent putting the lotion on his body, but Sellars could not remember now if [REDACTED] provided any further description. According to Sellars, [REDACTED] said that a previous incident occurred several days before the incident that she had observed, but he "wasn't able to say [if] it happened Thursday or it happened Wednesday."

Sellars agreed that she called the police the next day. She explained "I wanted to let [REDACTED] know that he had to tell the story over and over again and I wanted him to be comfortable with it and to know that he had to tell the truth and to tell everything and that it wasn't his fault." She said that [REDACTED] was handling the situation well, despite being a little boy." Sellars stated that after she dialed 911, police officers arrived at her home and took her statement. She was asked to accompany them to the precinct while her mother took [REDACTED] to the hospital. Once at the precinct, she waited about ten minutes to speak to a detective, but she wanted to go to the hospital to see [REDACTED]. After asking the police if they could take her to the hospital, she went there. Sellars agreed that she was

aware that [REDACTED] was examined in the hospital

When shown DX 2, Sellars recognized that they were pages from the composition book in which [REDACTED] had written that evening when [REDACTED] told him to write down what he couldn't explain to [them] " She acknowledged submitting them to the police that Monday

When shown DX 7, Sellars stated that it was a drawing of her apartment that she drew for the detective during her interview It depicted the entrance of the bedroom, the hallway, the kitchen, the location where the Respondent stood in the living room, and the front door She agreed that markings on the drawing indicated where [REDACTED] and the Respondent were standing when she saw them, where she was, and where she saw them She pointed out that she was standing in the doorway of the bedroom, and then she stepped out and proceeded to walk straight down the hall She said that she first realized that the Respondent was masturbating when she stepped out of the bedroom and 'came around the closet ' She agreed that she would have had a direct view once she first stepped out of the bedroom

Upon viewing DX 4, Sellars stated that the diagram was an accurate depiction of the layout of her apartment She indicated that she was first in her bedroom and then proceeded down the hall She said that [REDACTED] was up against a wall and the Respondent was facing him On DX 4, Sellars proceeded to mark "JJ" for [REDACTED] location "CL" for the Respondent's location, "NS1" for the location in which she first saw the Respondent, and "NS2" for the location in which she saw both the Respondent and [REDACTED] as she said she did not see [REDACTED] until she 'got up close to [the Respondent]' When asked, Sellars explained that the triangular shape on the diagram that jutted out into the hallway was a

closet, but the diagram did not depict the closet door. She agreed that since the diagram did not indicate a closet door at all, "the way it's drawn is . . . how the closet sort of jets in the hallway." She denied that it created any obstruction or view of her walking down the hallway. Sellars agreed that, from [REDACTED] location, the hallway created an obstruction from seeing where he was.

Sellars acknowledged that she had conversations about the case with the investigators after she took [REDACTED] to the hospital. She noted that, at some point, members of the Department returned to her apartment to collect evidence and she discussed with the investigators what evidence they should be collecting. She told them to collect the washcloth, the shorts that [REDACTED] wore, and [REDACTED] bed sheets, since [REDACTED] had stated that it took place in his room and Sellars had not yet changed his sheets at that time. She agreed that after she observed the incident, she kept the shorts that [REDACTED] was wearing. She denied that the shorts, towels, or sheets had been washed recently, stating that they had been washed about two weeks prior to the incident. She regularly did the laundry every two weeks but she had not gone yet, although "it was due for [her] to go to the laundry." She agreed that the laundry would have included all of her towels, clothing and sheets.

When asked if everyone in the household had their own linens, sheets and towels, Sellars explained "Once it's clean they picked their own. No one had a set one that they use every single time." She agreed that there were specific items in the house where articles were kept. She stated that the police collected two washcloths (one belonging to [REDACTED] and the other to the Respondent), [REDACTED] bed sheets, a towel, and [REDACTED] shorts. Of the two washcloths, Sellars described one as being of a lavender color, like a purplish

color light color' She said that [REDACTED] washcloth was hanging in the bathroom and the Respondent's washcloth was in the shopping cart According to Sellars, when [REDACTED] spoke about the washcloth, he said that the Respondent would use either his or [REDACTED] washcloth or "rag" to wipe [REDACTED] Sellars said that she did not remember if [REDACTED] referred to any other type of towel as a washcloth Sellars stated that other than the two washcloths, the police also collected the Respondent's towel, which was located in her bedroom She described it as a white, full-sized towel, which she did not believe 'had anything else on it'

When shown DX 3C, Sellars stated that the photograph depicted half of her living room, as well as the front entranceway When asked where the hallway was in relationship to that picture, Sellars said, 'It's around' She agreed that the room at the end that was marked 'Living Room' in the diagram (DX 4) was the same room depicted in the photograph (DX 3C) She denied that she could see in that photograph where [REDACTED] or the Respondent was located when she first observed each person

Upon viewing DX 3E, Sellars stated that it was a photograph of the front entrance of her apartment In relationship to the hallway leading from her bedroom, the front entrance was 'out towards the living room' by the front of the house She said that the hallway in which she came up was around, to one's left

When shown DX 3F, Sellars stated that the photograph depicted the hallway that leads from the front door of her apartment to her bedroom She indicated that the objects on the right-hand side of the photograph were pocketbooks that were hanging on the wall When asked about the obstruction pictured on the right-hand side of the photograph, down the hallway near the door, Sellars said, "That would be the linen closet, that is the

front of the bathroom She agreed that her bedroom was located at the other end of the hall from the front door She acknowledged that the closet affected her view if she were to look down the hallway from the front of her bedroom When asked how she was able to see the Respondent because of the location of the linen closet, Sellars said that in order to see him she had to step out of the bedroom If she were standing in front of the bedroom she would be unable to see down the hall due to the wall She indicated that she first saw the Respondent when she was in front of the linen closet

When shown DX 3G, Sellars said that the photograph showed what was "right in front of the linen closet in front of the bathroom, the shopping cart " She agreed that on the side of the photograph, it depicted the front door and this was in the same hallway Sellars was asked, "So this would be pointing from where?" to which she replied, "From my bedroom in front of the linen closet " She said she believed that the towel shown in the right-hand side of the photograph was [REDACTED] washcloth

With regard to DX 3I, Sellars said that the photograph depicted the bathroom in which two washcloths were hanging on a rack over the shower, but she could not remember whose washcloth they were When shown DX 3K, Sellars stated that it was a photograph taken from inside [REDACTED] room, which showed the hallway With regard to DX 3N, Sellars said that the photograph showed [REDACTED] room with the shorts that he had worn which were collected by the police Upon being shown DX 3O, Sellars stated that the photograph was of a washcloth that she believed to be [REDACTED], which was located right by the bathroom That washcloth was also collected by the police With regard to DX 3P, Sellars stated that the photograph was of a washcloth that she believed to be the Respondent's, which was located in the bathroom over the shower She said that the

police collected that washcloth

Sellars acknowledged that she directed the police to collect the two washcloths and shorts that were depicted in the photographs based upon the conversation that she had or overheard from [REDACTED] regarding the incident. She denied speaking to [REDACTED] prior to the incident about any problems between her and the Respondent, nor was it her practice to speak to [REDACTED] about her relationship with the Respondent. She said that [REDACTED] may have heard her and the Respondent arguing, but he "didn't have an idea as to what their main problem was or what they were going to do." She denied that [REDACTED] was upset at that time because of her relationship with the Respondent.

Sellars stated that she usually took a bath every night that lasted "[a]nywhere between 30 minutes to an hour," during which time the bathroom door was closed. She indicated that she would generally be unable to hear what was going on outside while she was in the bathtub because the water was kept running and she always had music on in the bathroom. She admitted that she smoked marijuana in the bathroom "[j]ust about every night." She stated that once dinner was over and everyone finished their showers, she was the last to take her bath. She indicated that while she was in the bathtub [REDACTED] and the Respondent were in the house alone together. She said that other occasions in which [REDACTED] and the Respondent were alone included when the Respondent was not at work that day, [REDACTED] did not have school to attend, and Sellars was at work or had to go to the store. When asked how often they were in the apartment alone together, Sellars stated that it varied but indicated that it was not a semi-regular occurrence as she would be home already by the time the Respondent returned home from work.

When shown DX 5A, Sellars stated that the photograph depicted the Respondent

and [REDACTED] nude from behind She said that the photograph was taken in her home in the [REDACTED] Houses sometime in 2005, although she did not recall the exact month She stated that DX 5B was a photograph of the Respondent and [REDACTED] "after while he was cutting his hair " That photograph was also taken on the same day in 2005 at [REDACTED] [REDACTED] Sellars stated that she was the photographer of both pictures She said she was not sure if the Respondent was aware that she was taking those photographs, but agreed that after she took the first one, he was aware of the second one Sellars denied that the Respondent objected when she was taking the photographs, that they had a discussion about the photographs after she took them, and that he asked her to destroy the photographs at any point

Sellars agreed that in the photograph, [REDACTED] and the Respondent were both nude in the bathroom She said that it was not a common occurrence for the two to be nude in the bathroom ' but they will be nude if they were going to the shower together after they did their haircuts " She stated, "He might have cut [REDACTED] hair maybe every two weeks but not every time they got in the shower together, only if they both had got their haircut that same day then they would get in the shower together " She agreed that [REDACTED] and the Respondent would shower together sometimes after a haircut When asked, Sellars stated that she could not say exactly how many times they showered together, but "it was quite a few times "

When asked how she was able to identify that the Respondent was masturbating, Sellars replied, "I seen it with my own eyes " She agreed that she had seen him do that before and was familiar with that movement With regard to [REDACTED], she said that this was the first time that she had seen him masturbate, with his hand on his penis and his hand

moving back and forth

Sellars denied that [REDACTED] ever indicated to her that he was angry with the Respondent at that time nor has he ever told her that the allegations he made were not true. Sellars acknowledged that [REDACTED] was subpoenaed through her to testify in this hearing but she denied her intent to bring him to testify. She explained, "[REDACTED] come a long way from since this happening and he's doing good now and I don't want to sidetrack him." Sellars agreed that there were two prior hearings regarding the incident in which [REDACTED] testified at both.

On cross-examination, Sellars stated that she was employed as a home health aide by Partners in Care in November 2005, a job from which she was terminated. She stated that she did not remember when asked if the reason she was fired was for forging a time slip saying that she had worked an entire week for a client when she, in fact, did not. But she did not deny that that was something that she did. She conceded that at some point during her employment with Partners in Care, she forged a time slip saying that she had worked when she actually had not.

Sellars agreed that when she worked as a home health aide, she had to commit to work for a number of different companies over the years and each of those companies had their own workplace standards, including policies regarding alcohol, drugs and integrity. She further agreed that those companies performed random drug testing in order to uphold those alcohol and drug policies. Although the tests were random, she explained that one was given with advanced notice. Sellars indicated that during the time that she worked for the various companies, she continued with her regular marijuana habit. When given advanced notice, she took measures to pass the drug tests by bringing

clean urine from someone else or attempting to cleanse her system which she agreed was dishonest to her employers

Sellars stated that when she first met the Respondent, she was residing at

[REDACTED] which was her mother's home She disputed the fact that she remained living in her mother s home for some time after that, stating 'The next day I went out with [the Respondent] and from that day on I had been with him ever since' She agreed that the day after she met the Respondent she went out with him and then moved in with him the day after that She said that he would pick her up every night after he finished working She acknowledged that, at that time, the Respondent was living with Campbell, who was still an active member of the Department and had not yet retired

Sellars stated that there was only one bedroom in Campbell's apartment, along with a living room, dining room, kitchen and bathroom She agreed that when one walks into Campbell's apartment, one would encounter the dining room area If one were to continue straight through the dining room, one would encounter the living room, which Sellars indicated was where she and the Respondent stayed To the right, down the hall was Campbell's bedroom Sellars agreed that one would have to walk down the hall and pass Campbell's bedroom in order to get to the single bathroom, in which she regularly smoked marijuana while taking a bath When asked if she did that while two active police detectives were living in the apartment, Sellars said that they both were not present at the same time There were occasions in which the Respondent was present but Campbell was not present 'all the time but she conceded that sometimes they were both present Sellars said that in order to conceal her marijuana use in the bathroom, she

smoked out the window or burned incense, but said that she "always" smoked out the window, as she did not want the Respondent to find out

Sellars agreed that the "clip" that she had referred to in earlier testimony is what is known in slang terms as a roach clip. She explained, "[I]t's the clip of the blunt the marijuana itself, butt of a cigarette like marijuana you put it out and I just saved it." When asked if it was the "actual butt of the cigarette," she replied, "No, it's the blunt of the marijuana." When asked by the Court, Sellars explained that a blunt was like a cigar. She agreed that she smoked a Philly blunt, which is a small cigar, and put marijuana inside it. She denied using something, such as some sort of clip, to hold the lit end when she reached the end of the cigar. She stated that the end of the marijuana was what she referred to as "a clip or the roach."

Sellars acknowledged sometimes leaving the end of the cigar under the rug in the bathroom and that she had a conversation with the Respondent when he found one of those clips. She said that they had a conversation in which he asked her to stop smoking. She agreed that she committed to the Respondent that she would stop smoking and that was the extent of the conversation. She denied that over the course of their relationship the Respondent suggested or attempted to help her obtain drug treatment nor did they ever have a conversation in which he stated that she needed drug counseling. She agreed that the substance of their conversation was that she promised to stop smoking. She said that over the course of their relationship, they had conversations like that about two times.

Sellars denied smoking marijuana in [REDACTED] presence or in the same room as him. She further denied that her actions after drug or alcohol use ever placed [REDACTED] in physical

jeopardy. When asked if she ever drove with [REDACTED] when she was "stoned," Sellars stated that she does not drive. She denied that there was ever a time when the police, the ACS, or CPS had to be called because of her actions while under the influence of marijuana. She said that she only recalled two occasions in which the Respondent found the clips under the rug and one occasion in which he found bags of marijuana in the house. Sellars indicated that prior to her current testimony, she had notified Sergeants Andrew, Crowley and Rodriguez during her tape-recorded interview on November 28, 2005, at the hospital about the Respondent discovering the clips.

Sellars agreed that there was one occasion in which the Respondent found marijuana in a jar while she was residing in [REDACTED]. She indicated that the Respondent returned the marijuana to her and she did not recall him throwing it out. She stated, "I believe I did tell him I was going to throw it out, I know he didn't throw it out. I believe I did tell him I was going to throw it away." She believed that the Respondent did not move the marijuana and left it in the sugar jar.

Sellars denied smoking marijuana openly in front of the Respondent and acknowledged that she made efforts to cover up her smoking over the course of her relationship. She agreed that the smoking occurred in the bathroom of either her apartment or Campbell's apartment, or outside if she was at someone's house.

Sellars agreed that her impression of the Respondent changed after the incident that she observed. Prior to the incident, though, she said, "Oh, in my eyes he was a great stepdad to [REDACTED]. At that particular time [REDACTED]'s biological father wasn't around so the only dad that he did know was [the Respondent]. In my eyes he was perfect." She disputed the fact that the Respondent took a greater interest than she did in [REDACTED].

education, explaining that since the Respondent was more educated at that time and had more parenting skills, he "took control over that part." Sellars testified that she and the Respondent attended school meetings with teachers and counselors, but the Respondent attended them by himself in situations in which she was unavailable. However, Sellars denied that the Respondent took [REDACTED] to medical appointments when she was unavailable.

Sellars recalled that [REDACTED] went to the [REDACTED] Emergency Department in relation to his rash, but she could not remember if a cream was prescribed. After being shown some hospital records, Sellars stated her memory was refreshed regarding the prescription for the cream. Sellars said that she did not recall whether she went to [REDACTED] with [REDACTED]. She said she doubted that the Respondent went with [REDACTED] by himself, stating, "I know [the Respondent] never took [REDACTED] to the doctor by himself."

Sellars indicated that she had no objections to the Respondent applying the cream to [REDACTED] body including his genitals, because of the "medical issue" present on his genitals as well as other parts of his body. When asked if, at that point, she found anything unusual about it, she replied "Not at all." She said that when she first met the Respondent, she did not know that he had children but she discovered that relatively soon thereafter. She was initially aware of the Respondent's wife and the children with his wife but she did not know about his other children. Sellars agreed that she knew that the Respondent lived separately from his wife.

Sellars believed at that point, that she was involved in a long-term relationship with the Respondent and she wanted to spend a very large portion of her life with him. She indicated that she was happy that he took an active role in [REDACTED] life also, as she

wanted someone to have a husband and fatherly role in her own life. She agreed that in addition to emotional support, the Respondent provided “[t]ypical financial support that a couple would do for each other buy each other things, food, clothes.” She further agreed that he contributed to the “upkeep of the household” when they lived together in the [REDACTED] for which she qualified for on her own. She disputed the fact that the Respondent assisted her with the transition from the shelter to [REDACTED] stating, “[A]nything that was bought in the house as far as furniture [we] went half and half on. He did not buy everything that was in the house.” She conceded that the Respondent did contribute toward the household “as a normal family would do,” and he provided half for the furniture, food, utilities, and other necessities.

Sellars agreed that the Respondent spent some weekends at his second home in [REDACTED] and during the course of their relationship, she went to that residence only once since that house was reserved for his wife and their children. On weekdays that the Respondent had his children, he would normally stay at Campbell’s residence. Sellars agreed that the Respondent provided payment to Campbell to allow the Respondent to remain in the apartment. Sellars, however, did not know if the Respondent paid anything toward his wife and children’s support.

Sellars stated that when she was living at [REDACTED] the Respondent spent “[J]ust about every night” there, as long as he did not have his children from Brooklyn. Sellars agreed that [REDACTED] told her after the incident in November 2005 that the Respondent’s sexual molestation started when [REDACTED] stayed with her at Campbell’s apartment. In the beginning, Sellars stayed alone with the Respondent at Campbell’s apartment as [REDACTED] was living with Sellars’ mother. Although [REDACTED] did not stay at

Campbell's apartment full-time, Sellars said that there was a two-month period in which [REDACTED] stayed there "for a good while" as he traveled to school in [REDACTED] and back to Campbell's apartment in [REDACTED] Sellars acknowledged that, primarily [REDACTED] residence during that time was exclusively with his grandmother

Sellars said that the only time she would leave [REDACTED] at Campbell's house was to go to the supermarket or a store that was located two to three blocks away. Her trips to the store generally took "15, 20 minutes, 30 minutes the most," depending on whether she was purchasing items for the house or searching for marijuana. If she went downstairs to talk to somebody and stayed out there, she brought [REDACTED] with her to play outside. She denied going away for extended periods of time -- such as overnight or for several days -- while [REDACTED] stayed at Campbell's apartment. On occasions when the Respondent stayed elsewhere other than Campbell's apartment, Sellars would stay with her mother.

Sellars stated that she moved out of Campbell's apartment and into a shelter because she had applied for Section 8 housing subsidy and lost the Section 8. The quickest way for her to get reinstated would be to move into a shelter, which she did for a nine-month period from February to December 2004. She admitted that during that period of time there were rules that required her to stay in the shelter. When asked if she engaged in "some dishonest tactics to get out of the shelter and then avoid those rules," she replied, "There was something that was done but it wasn't done by myself." She conceded that during that period of time there were occasions in which she stayed at Campbell's apartment with the Respondent, noting "I did it quite a few times, not a whole lot but there were times I did." With regard to the length of her stays, she stated

The most I would say we had weekend passes so that wasn't the problem during the week I might have stayed once so [REDACTED] had school so I couldn't leave him there all the time without me being there She indicated that [REDACTED] would sometimes stay on weekends or during the week with her at Campbell's apartment during the time she was in the shelter but he mostly stayed at her mother's home

Sellars stated that she was employed as a home health aide when she moved into [REDACTED] in December 2004 Her work hours varied and although she could not recall what hours she worked, she stated that they were flexible She could not recall what specific child care arrangements she made for [REDACTED] while she was working, but her mother cared for him while he was not in school and he, otherwise, was in school the majority of the time She said that the Respondent only cared for [REDACTED] on days that he was home and he did not work, if the Respondent was not there, he did not provide care for [REDACTED] She did not agree that it was rare for the Respondent and [REDACTED] to be home alone in the apartment at [REDACTED] As the Respondent did not work on Mondays, he and [REDACTED] were sometimes alone since Sellars worked every Monday

Sellars believed that she left her job in February 2005, but she was unsure She stated that after the incident occurred, she did not go back to work but she was employed during November 2005 She regularly worked on Mondays when her patients were available and not in the hospital She stated that she usually arrived home about 5:00 or 6:00 p.m. or earlier on occasion, although the times varied as she stayed late with certain patients She agreed that she communicated with the Respondent ahead of time on Mondays to let him know when she would be coming home for the day She had to do so only on Mondays because on other days of the week, she would arrive home before him

She would talk to the Respondent periodically throughout the day on Mondays so he would know when she was on her way home. Depending on where she was at, since she had cases all over the place," her travel time home varied. She said, "[The Respondent] always knew my location but he couldn't say, Okay, she will be in another half hour because I took the train home so ."

Sellars agreed that prior to Thanksgiving in 2005, there came a time when the Respondent moved some of his belongings out of the home. She indicated that there were difficulties in the relationship due to her inability to trust him. She explained

It was just little things I would catch him in lies. One time he said he was in a meeting and when I was calling him he didn't answer and then I found in his pocket a stub for the movie which was the same time and same day I was calling and the story just didn't make sense so a lot of miscommunication and trust.

She agreed that this was an ongoing issue and not the only argument that they had regarding trust, which caused her to sometimes become upset. She characterized the arguments as "just discussions" and not "blown out fights," as the fights were not physical all of the time. She acknowledged that there were physical interactions before November 2005 and it reached a point where the Respondent decided to move his belongings, with the exception of several bags out of her home. With regard to the future of her relationship at that time, Sellars said that she "had no clue" they had been together for five years and she did not know "where it was going to go."

Sellars agreed that before she met the Respondent, she was a single parent and with her mother's help, she was the primary caregiver for [REDACTED] with whom she was very close. She denied thinking about how [REDACTED] would be affected by the Respondent leaving. Sellars indicated that after the Respondent moved his belongings out after the

argument, he stayed away a little while but she did not recall for what length of time She agreed that he did come back and stayed regularly, but he did not bring back his belongings, which included items such as his military uniforms

According to Sellars, she and [REDACTED] went to her mother's home, and the Respondent arrived later that night On the day of the incident, the Respondent's children [REDACTED] his great nephew, his nephew, and [REDACTED] were over at her home Sellars denied smoking the night before, noting that she had stopped smoking by then She had stopped smoking in October right before she was baptized and agreed that she had done so 'cold turkey' and did not smoke at all after that

Sellars recounted that on November 27, 2005, she, the Respondent his sister and the children went into a car The Respondent first dropped off Sellars at her mother's home and proceeded to drop off his sister and her son at the George Washington Bridge He then picked Sellars up and they took his two children home They then returned home At that point, Sellars, the Respondent, his great nephew, and [REDACTED] were at home, waiting for someone to pick up the nephew Sellars agreed that she went to sleep and asked the Respondent to stay with her until she fell asleep At some point, the Respondent's great nephew came into the doorway of the bedroom to say goodbye She said that the Respondent was in the house at that point, but he was not in the bedroom

Sellars said that she and the Respondent had sexual contact on that 'Sunday afternoon between 1:00, about 12:30, 1:30 in the afternoon' She took a nap when they returned home, between 4:30 and 5:00 p m She agreed that the sexual contact included both oral sex and sexual intercourse They had intercourse before getting out of bed, then she cleaned the house, he cooked breakfast for the children, and they got dressed and left

She approximated that she woke up and came out of the bedroom between 12 30 and 1 00 p m , or 1 30 p m at the latest Sellars denied knowing what the Respondent was doing while she was asleep She further denied that she smoked anything or drank any alcohol before going to sleep nor was she tired because she had smoked marijuana When asked if it was her habit to take three-hour naps in the middle of the day, she replied, Sometimes I don't know if it was three hours I guess it depend[s] on how tired I was ' Sellars said that she had gone out the previous night on Saturday With regard to how long she sleeps in the morning, Sellars said that she did not know, adding, [I]f I am tired I m tired, I really can't tell you how long I m asleep '

Sellars acknowledged being interviewed by members of the Department on November 28, 2005, but she denied telling them something to the effect of that she had a premonition and thought something had been going on, so she decided to sneak out of the room Sellars acknowledged that her bed squeaked in some places when one gets out of bed and on that day, by not putting a lot of pressure on the mattress, she intentionally got out of bed in a way that caused her bed not to squeak However she denied that she had done so because she had a specific reason to or because she had a premonition She further denied that she made a decision to sneak down the hall, stating 'I didn t sneak down the hall There is no way to sneak down the hall It's a small hallway, either you are going to see me coming or you're not "

Sellars indicated that her bedroom door was closed but it was not shut all the way, so she could push it open She agreed that she had to push the door open but then acknowledged that as the door opens inwards, she would have to pull the door open She said that when she opens the door, it swings to her right and the hinges of the door were

located on that side. She did not recollect if the door made any noise when it opens and indicated that it did not usually hit the wall or any other object as it was being opened. Sellars did not recall what she was wearing at that point or if she had anything on her feet, such as slippers or shoes.

Sellars indicated that the hallway floor was composed of vinyl tile. In order to see anything, one would have to step out of the bedroom. She agreed that when one looks down the hallway [REDACTED] room is located to the left, the living room to the right, and the kitchen is located before the living room. Sellars testified that the last time that she had seen the Respondent was when she was laying down to go to sleep. He came into the bedroom, she lay down on his chest, and he lay down with her.

Sellars said that before she stepped out of the bedroom, she saw a shadow. She said that the Respondent was standing in front of [REDACTED] while [REDACTED] was against the wall. She agreed that the Respondent had his left arm against the wall, with his back facing the home's front door. The Respondent had one hand on the closet wall and the other hand was holding his penis. Sellars said that she did not see [REDACTED] until she walked up to him. Sellars said that the Respondent was facing her at an angle, since his back was facing the door. She denied that his eyes were closed. She agreed that she was able to walk within arms' length of the Respondent and then she saw her son with his shorts down below his penis which he was holding, and his mouth on the Respondent's nipple.

Sellars agreed that she walked up to [REDACTED] and the Respondent and said, "What the fuck." When asked if she tried to separate them, Sellars said that [REDACTED] had already walked into the living room at that time. She indicated that she did not go to [REDACTED] immediately, she walked back to the bedroom. She stated that, at that point, she was

'extremely calm' because it could have went very differently" She denied yelling, rather, her voice was extremely low She said that as she "walk[ed] away for that second, 'the Respondent went back into the living room to [REDACTED] When asked if [REDACTED] was very upset at this point, she stated that she did not see him once she walked in the room as he "jetted back" into the living room

Sellars denied calling the police on that day but she did tell the Respondent to get out She agreed that she allowed the Respondent to pack up his belongings first but denied that they had a conversation as to what he could or could not take She added that the Respondent asked [REDACTED] at one point, whether he wanted him to leave the Play Station console and Sellars told the Respondent that he had to leave After the Respondent took one bag downstairs, Sellars felt that he was taking too long and did not want him to come back upstairs, so she took the second bag downstairs Sellars agreed that after the Respondent went downstairs, she and [REDACTED] were by themselves for a short period of time but she denied taking the opportunity to call the police at that point

Sellars said that the Respondent eventually drove away after she went downstairs and she obtained her key back from him, but she did not see him drive away She acknowledged making a phone call, at that point, to the Respondent's aunt, who lived in her building Sellars indicated that she has known his aunt since she lived in that building, but Sellars did not know her prior to that Sellars agreed that she was friendly with the aunt who was a close relative of the Respondent She said that she had borrowed money from his aunt "just that time" and had never done so before then She stated that the Respondent's aunt's name was [REDACTED] and she denied that [REDACTED] was surprised to receive a phone call from her in which she asked to borrow money, even

though this was the first time that Sellars had made that request. She was asked, "Because your first reaction at that point you either wanted to get drunk or stoned or both?" to which she replied, "That was my normal routine if I had issues that is what I normally do if I was stressed out or something, yes."

Sellars agreed that, at that point, with the Respondent gone, [REDACTED] was very upset. She stated, [REDACTED] was upset to the situation. I can't say that he was upset because I was quiet or I was whispering, he was upset from my point of view of what just got seen. what I just saw." Sellars acknowledged putting [REDACTED] in the bathtub to calm him down before she went to borrow the money but denied thinking at that point that she might have been destroying evidence. She denied telling [REDACTED] anything about what she had seen.

Sellars indicated that when she came back from borrowing the money, she checked on [REDACTED] who was still upset and was crying. She said that "he was more scared of at that time telling [her] he didn't want [her] to do anything bad." When asked what gave [REDACTED] the impression that she was going to do something bad, Sellars stated, "I just caught a man molesting my son." She denied expressing her intentions to [REDACTED] such as where she was going to go. She stated that she went outside to the corner. She said that her building was located between [REDACTED]. She indicated that she first bought a nickel bag of marijuana from a dealer who is always across the street. She gave the dealer the money, and he gave her the marijuana that he had in his pocket. Sellars said that she walked to a store on [REDACTED] and [REDACTED] Street to purchase cigarettes and then she purchased alcohol in the liquor store adjacent to that store. She then walked through [REDACTED] and went back upstairs. She did not

remember if she smoked the cigarettes first, but then stated The cigarette was first because I always smoke cigarettes I still wasn't smoking marijuana I did roll it took like two or three pulls and that was it With regard to the liquor, she said that she had a sip but she did not drink that much because she was "just numb "

Sellars said that while she was outside, she called her cousin [REDACTED] She indicated that she was aware that there was a separate police precinct, a PSA, down the block, given that she lived in a housing development At that point, she had been living there for almost a year She denied walking past the PSA on her way to the store or on her way back, since it was located one block away She agreed that although the precinct was only a block away, she chose not to walk there to make a report at that time nor did she call the police when she called her cousin [REDACTED] during her walk

Sellars indicated that when she returned to her apartment, she waited for her cousin [REDACTED] to arrive, and her cousin's husband [REDACTED] later arrived Sellars denied asking either person to call the police She said that [REDACTED] spent some time with [REDACTED] but Paul did not Sellars stated that she was in the room when [REDACTED] told [REDACTED] to write something down in a notebook and the two women left the room so that [REDACTED] could do so Sellars stated that [REDACTED] did not stay there all night, agreeing that she only stayed for a couple of hours At some point, [REDACTED] arrived but Sellars could not remember if [REDACTED] and [REDACTED] left together To Sellars' knowledge, [REDACTED] and the Respondent had a conversation some time that evening but she could not recall if [REDACTED] returned to her apartment after meeting with the Respondent

Sellars stated that she invited her mother and sister over to her apartment the next day She acknowledged that she had additional conversations with her family and [REDACTED]

before she called the police. She said that her family was with [REDACTED] for about an hour at the most before she called the police, but she was not really sure about the length of time. When asked if she wanted to prepare [REDACTED] to tell the story repeatedly, she stated, "Yes, I wanted to let him know that he had to tell the story over and over again, that he had to tell it to the jury he had to tell it to the cops, the lawyers and not to be scared." She acknowledged that going through this process with [REDACTED] before she contacted the police reminded her of her own experience in which she was a victim of rape. With regard to how her experience affected her approach with [REDACTED] Sellars stated, "Nothing was done when it happened to me. There was no court. There were no cops. I wanted to make sure that it was done the right way this time, that there was something to be done." When asked, "And you wanted to make sure that something happened to [the Respondent]?" she replied, "At that time yeah, my thing was he has to pay for what he's done to my son."

On re-direct examination, Sellars was asked if she had an intent to call the police when she saw what she saw that night. She replied that she was in "pure shock" when she saw the incident. She said, "I mean after I got [REDACTED] in the bathroom I already knew the cops were going to be called. There was not a question in my mind." She acknowledged that she made an independent determination to wait until the next day to call.

Sellars agreed that she was aware that if she had disclosed her drug use to her employer, she would have been terminated but she denied that the Respondent ever threatened to have her arrested because of her drug use. Sellars stated that she has testified in Family Court and Criminal Court and has been interviewed two or three times

regarding this matter She agreed that she has spoken to other attorneys at various times She indicated that she specifically told the IAB investigators that the last time the Respondent found marijuana in the jar in the kitchen, he told Sellars that "it wouldn't be a problem ' if she kept two bags and informed him of their location She said she probably mentioned the clips to the investigators also, but she was 'not absolutely sure at the time '

Sellars admitted that she bought marijuana on the night of the incident, although she had stopped using drugs the previous month, October When asked why, Sellars explained "In the past before I stopped smoking marijuana, that was my scapegoat for whenever I got aggravated or stressed, that was just to calm me down and let me think ' With regard to her calm demeanor following the incident, Sellars said, "I still don t know, I think I was having like an outer body experience because my tone was a voice that I never could get to be again now that low I think I was scared, in shock "

Sellars explained that she circumvented the rules of the shelter she had stayed in by having the Respondent fill out and sign a form that she was given that asked for her work hours and similar information so that she could stay out

Sellars said that she could not remember the exact month in which she and the Respondent had the fight that resulted in him moving out some of his belongings but it took place before November She stated, "We were going through it in August and in July because that is when he found marijuana and that is when he told me to keep the two bags and keep in a place where he knows so the fight might have been around that time too ' She agreed that it may have taken place at the end of summer, but the Respondent continued to stay with her afterward Sellars denied that they were still having

conversations about breaking up in November 2005, but she acknowledged that she was considering leaving the Respondent around that time because [her] feelings had started to change a lot "

Sellars stated that when she was walking down the hallway and saw the Respondent, he was looking at [REDACTED] She denied asking [REDACTED] to fabricate these allegations because she was angry at the Respondent

The Respondent's Case

The Respondent testified in his own behalf The Respondent also called retired Detective Theodore Campbell as a witness In addition, the Respondent offered in evidence the testimony of Dr Lawrence Rosenberg given at his criminal trial

The Respondent

The Respondent testified that prior to these allegations, he had been a member of the Department for 19-and-a-half years At the time of the allegations, he voluntarily remained suspended without pay for three-and-a-half years He was engaged in a Family Court trial one year before a Supreme Court trial The Supreme Court trial ended May 6, 2008, and he believed that a decision was rendered in the Family Court trial on April 21, 2009 He testified that he was acquitted in the Supreme Court trial of all charges and the Family Court petition was dismissed in its entirety

Upon questioning by the Court, the Respondent explained that with regard to the Family Court petition, the court decided that "it was imperative that the facts be brought out and a trial was actually conducted" since the allegation involved a child

The Respondent stated that the actual Family Court petition was brought by ACS on behalf of his children and [REDACTED] The petition contained allegations similar to the ones in the criminal court trial that he had sexually molested [REDACTED] and generally endangered the welfare of his own children Upon being cleared of allegations in the Family Court petition, the Respondent requested to be returned to duty, at which time he was returned to a suspended with pay status toward the end of 2009, approximately six or seven months after the Family Court decision He indicated that since that time, he has remained in a suspended with pay status

Prior to the allegations, the Respondent was assigned to Brooklyn North Narcotics since 2000 He previously worked in Manhattan North Narcotics and the Intelligence Division and had worked undercover in Queens, but the majority of his years in the Department were spent in Narcotics He stated that, prior to 2005, his evaluations were favorable, with ratings of "Above Standards" and he has no significant disciplinary history other than a CCRB complaint that resulted in charges and specifications that he was found not guilty of In addition, he stated that he has received three Meritorious Police Duty medals and 45 or 46 Excellent Police Duty medals⁸

With regard to his current family situation, the Respondent stated that he has been separated from his wife for about 15 years He has four children with her and two younger children with [REDACTED] He noted that he provides support for his children and is "adamantly" involved in their lives, "[e]ven at their age now His oldest child is 25 years old and a member of the service his youngest child is 17 years old and in his 12th year of school

⁸ According to the Respondent's Departmental records, he has been awarded four Meritorious Police Duty medals and 23 Excellent Police Duty medals

The Respondent testified that he initially met Nicole Sellars when he was performing observations in a prisoner van. He was working the midnight tour and was the operator of the van, the passenger was another detective. When the Respondent exited the van, he lost contact with his partner, who had gone into the building that Sellars was coming out of. By the time the Respondent parked the van legally and went into the building to find his partner, Sellars was coming out of the building.

The Respondent's partner initially had stopped Sellars for a "stop, question and frisk" as she was coming down the stairs. The Respondent stated, "Well, she was a little annoyed behind the stop." As Sellars is a female, the officers could not touch her and their search was limited to looking into her purse. He explained that Sellars expressed her annoyance by saying "some words that definitely let you know she was annoyed by the stop." In response, the Respondent apologized to her in order to calm her down. As the conversation continued, they exchanged phone numbers.

When asked how many of his children were boys, the Respondent noted that only one is a boy and he was 17 years old. He denied that there were any prior allegations of any kind of sexual abuse or misconduct towards his son or any of his other children.

The Respondent indicated that he did not take any further steps after apologizing to Sellars. After exchanging numbers, Sellars left and the Respondent and his partner continued with their observation. Three days later, he received a call from Sellars and they talked about what [he] did for the day. He stated, "So we decided that we were going to go to – I was going to take her out." He indicated that the call did not start out with her calling to ask him out. He characterized it as a 'basic conversation' after which they hung up. Then he and his roommate decided to go out, so the Respondent called

her back to invite her out This occurred in 2000

Three days after that first night, he and Sellars started dating He stated that in the beginning of the relationship, 'everything seemed to be very well" and they spent a lot of time together Sellars stayed with her mother but would frequently come over to his residence at the time, at [REDACTED] in the [REDACTED] His roommate, Campbell, was a detective in the 33 Precinct Detective Squad, but retired in 2005

The Respondent reiterated that Sellars would come over and stay in his and Campbell's apartment As he did midnight tours in Manhattan, he would drop her off at her mother's place in Manhattan, where she lived, and then he would go to work He said that he did not find out that she had a son until several months later before the son went away to Virginia

He said that in the beginning, Sellars' son, [REDACTED] resented him He stated, 'So it took some time and we came around, and we got to the point where he actually began to call me Dad,' which was before [REDACTED] went away to Virginia He noted that he treated [REDACTED] like a son [T]here was nothing at the time I wouldn't do for [REDACTED] I didn't do for my own kids If I went shopping, clothes shopping for my kids, I went clothes shopping the same time for [REDACTED] If I bought my kids shoes, I bought [REDACTED] shoes" About two months into his relationship with Sellars, the Respondent started treating [REDACTED] like a son because he stayed in [REDACTED] a lot with his grandmother

The Respondent said that at that point, he took his relationship with Sellars seriously He stated, I actually fell in love with [her] So at that point, there wasn't much that I wouldn't do for her because of my love for her at the time, ' including paying for her schooling

At some point, Sellars continued spending some nights at the Respondent's residence but her mother moved to [REDACTED] Avenue so she spent nights there [REDACTED] would go over to the Respondent's residence on the weekends, when there was no school, and sometimes during the week. The Respondent explained that he lived in Campbell's living room so he and Sellars would share that room. The children would sleep in what he considered the dining room area, on cots or an airbed. Campbell was in the apartment regularly and stayed in the only bedroom there.

The Respondent indicated that he was not left alone with [REDACTED] on a regular basis because [REDACTED] was still attending school in [REDACTED]. If [REDACTED] did stay during the week, Sellars or someone other than the Respondent would always be there in the house. Additionally, Campbell had a girlfriend who had a key and she "came and went as she pleased."

The Respondent said that when Sellars' mother moved to [REDACTED] Avenue in [REDACTED], [REDACTED] continued to attend school in that borough. He explained that he became involved in [REDACTED] schooling when he noticed that he had serious issues including behavioral problems that the school often complained about and reading. When the school requested a parent, the Respondent went. He purchased Hooked on Phonics to help [REDACTED] with his reading, and helped him with his homework and schoolwork which [REDACTED] had a problem understanding. The Respondent stated that [REDACTED] grades began to "increasingly" improve. During the year that he met him, [REDACTED] academic status was "promotion in doubt" but with the work that he did with him, [REDACTED] went to summer school and was promoted.

The Respondent indicated that Sellars was not too involved in [REDACTED] schooling

because of her education level, the highest grade she completed was the 9th grade. Since she did not understand some of his work, the Respondent was more likely to help him with homework. In addition, if there was an issue at school, the Respondent would most likely go. He indicated that Sellars did not mind "at all" that he attended the school conferences, in fact, she attended some of the conferences with him.

He stated that during the first year, Sellars was unemployed and then she started working as a home health aide. She was terminated from that job but was able to find another home health aide agency that trained her and employed her a month later.

The Respondent denied that when [REDACTED] was living at his grandmother's place and Sellars was periodically staying with him, he had any occasion to sexually abuse [REDACTED] in any way. He further denied that there were allegations made to him by anyone, including [REDACTED], that he had improperly sexually touched him in any way.

The Respondent stated that in January or February 2004, Sellars went into a shelter. He explained, "She had applied for Section 8, and Section 8 was lost. She failed to get an apartment in time, so she decided to go into a shelter." The Respondent indicated that prior to that time, when Sellars was living at [REDACTED], he suspected that she was using some sort of illegal drugs because she began to develop mood swings and was unable to sleep at night. He further explained that she "appeared to want to have her way in most things, and it because an issue with [them] with money." He elaborated that she would take some of her jewelry and property and pawn them for money. He stated, "It just became an issue that I felt that I immediately had to talk to her about."

He conceded that he never saw her using drugs, but it was her behavior that led

him to believe that she may have been using drugs at the time He spoke to her about it, but she denied it He stated, "Then we had several conversations, but it appeared to get worse because I began to believe that [she] was actually using a type of drug other than marijuana because she began to, you know, she sat still, she would have a nod and it became to be embarrassing at some places " She would sit still and then fall asleep He reiterated that he did not ' see her actually use the drugs at the time" nor did he ever find any drugs in the bathroom There was a bathmat that was placed on the floor to prevent anyone from slipping when taking a bath or shower, but it was usually kept on the side of the tub when the bathroom was not in use The Respondent explained that the mat was not regularly kept on the floor and he never discovered anything hidden beneath it

During the time that Sellars moved into the shelter, the Respondent stated that their relationship was beginning to "fall apart" since the times that they would see each other 'kind of got distant' They would not see each other for several days He mainly saw her on the weekend since he transferred to Brooklyn and was no longer working the midnight tours He was working "whatever tour the supervisor said It was difficult " He said that he "hardly" gave Sellars spending money, only providing her with what he felt she needed He stopped giving her spending money when he started suspecting that she was using drugs

During the time that Sellars was in the shelter, [REDACTED] stayed with her The Respondent said that [REDACTED] would mainly come over when his children were there, although he did come over when his children were not there Since most of [REDACTED] friends lived by his grandmother's, [REDACTED] mainly went there and stayed the weekend with her The Respondent said that [REDACTED] would see him and call him ' Dad ' The Respondent

still provided him with what he needed and shopped for him

The Respondent said that he mainly saw [REDACTED] over the weekend. Sometimes during the week, the Respondent would drive to the shelter and honk his horn since the apartment faced the front of the building. They would then come outside and see him. Sometimes the Respondent would go for one or two hours, taking [REDACTED] to dinner, dropping him back off, and going home.

During that period of time, while [REDACTED] was at the shelter the Respondent stated that there were not a lot of occasions where he was left alone with [REDACTED] "unless there was a reason for [him] to go to his school, or maybe he had a doctor's appointment." He said that there were times when [REDACTED] stayed, his mother would get up in the morning and take him to school directly from [REDACTED]. He denied being alone with [REDACTED] in the apartment, denied ever sexually abusing him during that period of time, and denied ever being accused by anyone of sexually abusing [REDACTED] during that period of time. He indicated that he did not discover any further evidence of drug use by Sellars during that period of time but still suspected it because she "hadn't changed with regards to that." He stated, "So we still had some differences. Because she stayed in a different location, it wasn't as frequent."

Sometime around December 2004, Sellars was offered a New York City Housing unit in [REDACTED] in [REDACTED] and she accepted it. It was a two-bedroom apartment on the second floor of a building at [REDACTED]. The Respondent said that he did not move in with Sellars immediately, but she gave him a set of keys. He kept his residence in [REDACTED] and never changed his address, either with the post office or the Department. He indicated that he considered his apartment at [REDACTED] to be

his primary residence. He said that at most, he would stay three nights at Sellars' apartment and he only kept "about three pairs of pants, three shirts, some underwear, some socks that sort of thing. Stuff to shave if [he] was there for three days, [he] could properly groom [himself] and be dressed for work."

He agreed that although he had misgivings about Sellars' drug use, he continued the relationship after she moved into the apartment. He explained that he was trying to get professional help for her, stating, "She continued to make promises with it. One of the things is, you know, I loved her." He said that several weeks after moving into her apartment she admitted "using it." One morning, he got up for work and found some marijuana in a sugar jar in her apartment. He woke her up and they talked about it. He stated, "And again you know, putting marijuana in a sugar jar clearly demonstrated she was trying to hide it. And she had promised that she stopped, and me finding it trying to make coffee kind of pissed me off. So I left." He went to work and did not return for another three days.

When asked if Sellars stated what action she would take regarding the marijuana he found, the Respondent said, "She was yelling something about what she was going to do but I didn't pay much attention." When he woke her up and showed her the marijuana, their conversation was "pretty much limited." He put his coat on and left.

He denied calling the police or ACS, nor informing his supervisors about this. He explained that it is unlikely for a family member to call the police or ACS on a family member who is a substance user, stating, "If you love them, you get help for them, and I considered Nicole to be a family member needing help. And I was adamant of trying to get professional help for Nicole because I knew she had a problem." With regards to the

issue of Sellars' drug use endangering or interfering with her ability to care for her son, the Respondent stated, "Like myself, Nicole went out of her way not to let [REDACTED] know what she was doing." He denied ever seeing Sellars use drugs in front of her son. He said that when Sellars appeared to be incoherent, she "pretty much stayed to herself" or went to her room when she was in that state, she would not stay in [REDACTED] presence.

The Respondent agreed that his children socialized with [REDACTED] during his relationship with Sellars from 2000 to 2005. They mainly socialized at Campbell's house, when the Respondent's children visited. He said that the children "got along very well" even after Sellars moved to the [REDACTED] Houses, although his children had only been to her apartment there twice. Since the Respondent still maintained a residence with Campbell, the children would sometimes stay at Campbell's place because of the sleeping arrangements.

When Sellars moved into [REDACTED] the Respondent said that he paid for utilities such as cable and the phone and provided her with carfare and food. In addition, he purchased a TV, living room furniture, two matching glass stands, towels, washcloths, and "things that you buy to have in a house because when [Sellars] moved in there, she actually had nothing."

The Respondent indicated that after Sellars moved into the new apartment, she lost her second job as a home health aide. He said that he was not aware of why she lost that job, but noted that she was asked to constantly appear at the main office in Manhattan. Prior to that, there was a urinalysis taken. He stated, "But she didn't talk much to me about what the decision was or what the problem was and I didn't ask." The Respondent noted that this occurred "not long before the allegation."

The Respondent agreed that at some point during his relationship, [REDACTED] visited relatives out of state in 2002. He said that he did not know, at first, that [REDACTED] was away since he stayed mostly at his grandmother's house. The Respondent first learned of his absence when Sellars told him that she had allowed [REDACTED] to stay in Virginia with an aunt, but she had not heard from him. Because Sellars did not have any working contact numbers, the Respondent performed a Google search of an address that Sellars provided for an uncle in Virginia. He contacted the sheriff's department and was able to locate a working telephone number for the aunt through the "anywho.com" website. Sellars and the Respondent then visited the aunt, who had returned to New York after having taken her own child and [REDACTED] down to Virginia. From the conversation with the aunt, the Respondent gathered that Sellars was under the impression that the aunt would remain with the children in Virginia, but when they visited her she did not have the children.

At that time, the Respondent was an instructor in the military. Since then, he has retired in 2006 after 22 years of service. He last attained the rank of Sergeant 1st Class. As an instructor he was on call to teach an advanced commissioner course and would go wherever he was needed. During the time that [REDACTED] was in Virginia, the Respondent went to Virginia for a Military Occupation Status course. Prior to leaving for Virginia, he provided a copy of his military orders to the sheriff's department in the county where [REDACTED] was supposed to be and notified them of his graduation date. He entered into an agreement with the sheriff's department in which he would meet them at their barracks and they would ride with him to get [REDACTED]. The Respondent indicated that [REDACTED] was returned on the day of his graduation.

The Respondent said that, at that point, [REDACTED] was in real bad condition. He

appeared to be maltreated He had open sores over almost 85 percent of his body And sores you can tell where he had scratched and they became infected He didn't do much talking He just didn't look good at all " The Respondent then returned with [REDACTED] to New York, but Sellars did not seek medical attention for him upon his return, leading the Respondent to demand that she do so The following day, she took [REDACTED] to the hospital but the Respondent did not go with her because he went to work According to the Respondent the staff at [REDACTED] Hospital did not know what [REDACTED] condition was and they were unable to give Sellars a diagnosis The Respondent said that he kept paperwork "with just about everything they did" related to [REDACTED] doctor visits One document from the [REDACTED] Emergency Department, dated August 16, 2002 [Respondent Exhibit (RX) A] states, regarding [REDACTED]

we do not know what this rash is we are giving you cream for possible scabies and antibiotics for a possible infection from scratching return [sic] to the ER if any fever, vomiting or if your child does not look well otherwise follow with derm clinic

The Respondent stated that two prescriptions were issued one for the antibiotic and one for the cream Sellars gave the prescriptions to the Respondent when he returned from work, and he paid for them to be filled The Respondent denied using any homemade remedies, he and Sellars just used the prescription cream and antibiotic provided by the doctor as instructed

Upon viewing DX 8A, the Respondent stated that he took the color photographs for three reasons first, this was an incident where the mother could not contact her child, second, the child was in a different state and returned to his mother in this condition, and third, Sellars was resentful of taking [REDACTED] to the doctor because he had been with family

members on his father's side, but the Respondent was able to talk Sellars into doing so. The Respondent explained that in photograph A7, there is a dark scar on [REDACTED] leg, which was an open sore. In A2 and A6, the scratching led to open sores. The Respondent attributed the open sores to the scratching, but "most of it from being untreated. And so this is where the doctor wanted the cream applied."

The Respondent stated that when the prescription was filled he and Sellars together applied the cream to the open sores. When Sellars applied the cream, it was in the Respondent's presence. When they both applied the cream, they would show [REDACTED] where the cream was to be applied. In some areas, the sores were left untreated so long that they healed on their own; in those areas, it was not necessary to apply the cream. The doctor had prescribed medicine for infections where he scratched and the cream was to be applied on the open sores to assist with healing.

The Respondent denied [REDACTED] ever expressing discomfort when he applied cream to his body because, he said, on the one or two occasions when he applied the cream, it was always in Sellars' presence. Conversely, on the one or two occasions that Sellars applied the cream, it was always in the Respondent's presence. He denied that Sellars ever objected to the Respondent applying the cream to [REDACTED].

He agreed that there came a time when [REDACTED] was taken to see a doctor due to some concerns about a hormonal imbalance. The Respondent said that [REDACTED] imbalance existed prior to him becoming involved with Sellars, but he first became aware of it when Sellars made an appointment for [REDACTED] to see a specialist. He said that the hormonal imbalance "greatly, greatly, greatly concerned" [REDACTED]. To the point where at one time [he and Sellars] were considering having him see a psychiatrist about it' [REDACTED].

expressed concerns to the Respondent regarding his hairs because it made him feel older than other children his age. He explained that [REDACTED] had hair on his armpits that were long, so he would not wear tank tops or short sleeve shirts. [REDACTED] went out of his way to hide his condition from other children his age.

The Respondent said that Sellars took [REDACTED] to a specialist who explained that there was nothing medically that she could do such as prescribing a medicine to slow the growths. The specialist suggested "that if it bothers him so severely that it be trimmed to a point where it's comfortable for him and that he doesn't always be so concerned about it." The Respondent clarified that the hair in question was [REDACTED] underarm and pubic hair which was greatly long for his age.

The Respondent denied that Sellars asked him to help [REDACTED] with this situation. After the doctor visit, Sellars attempted to cut [REDACTED] hair in the Respondent's presence and became uncomfortable with doing so. The Respondent said, "Then the second time she tried, [REDACTED] got an erection. So as a family we decided, you know, when it needs to be done I will do it." The Respondent assisted with the trimming on two occasions. He said that Sellars had tried twice and then sometimes two or three months would pass and [REDACTED] made no mention of it. As long as he made no mention of it, the Respondent said that he and Sellars did not bother with it."

The Respondent agreed that there were occasions where he and [REDACTED] were naked together in the same room, mainly coming in and out of the bathroom. If the Respondent stayed at Sellars' apartment, he would come home from work in the evening, get undressed, and go into the bathroom to take a shower at which time [REDACTED] would be coming out. [REDACTED] would have a towel wrapped around him and the Respondent would

have a towel wrapped around himself Sometimes, when they passed each other, they would be naked The Respondent denied that either Sellars or [REDACTED] objected to him being naked in front of [REDACTED] He said that Sellars was present several times when he was naked in front of [REDACTED]

The Respondent agreed that there came a time when Sellars jokingly took pictures of him and [REDACTED] together He explained that he was away on military duty and Sellars had accompanied him That night she became irate and knocked the camera off of a tripod He said that she "threw a fit One of her, went into one of her swings, her moods, and she couldn't be talked to, and uncontrollable " She had knocked books down, slammed doors and knocked the camera over In response, the Respondent said that he detached the camera from the tripod and took the camera from her He had bought that camera for her as a Christmas gift When she knocked it over, he told her that she had broken it, and he kept the camera for over 18 months before returning it to her in 2005, when she had her apartment

When he returned the camera to Sellars, he said that she became excited since she believed that he had thrown the camera out The Respondent got undressed and prepared to take a shower He stated, [REDACTED] was already in the shower, so when he was coming out, I was going in, and she came back and started taking pictures It was like 30 something pictures that were taken that night Half the pictures that were shown here, the other half is, you know, it's way more than what was shown here "

The Respondent described one of the photographs that were taken that day
(RX B)

What you have here is myself I had actually cut my hair, and then I cut [REDACTED] hair prior to me doing my own And

so when she started taking the pictures, [REDACTED] actually came back into the bathroom and showed me a place in his own hair where I missed So I am actually standing in the bathroom smoking a cigarette I had no idea she was going to take these pictures

The Respondent denied that there were specific towels and washcloths assigned to each person living in the apartment According to the Respondent, to determine which washcloth to use, one would go to the shelves in the hall of the apartment, right outside the bathroom, where the towels and washcloths were kept One would then pull the curtain back, get a towel and washcloth, go into the bathroom and take a shower He reiterated that there were no assigned towels or washcloths

He agreed that there were times when he would use a towel or washcloth to wipe himself off after he had sex with Sellars He said that if he knew in advance that they were going to have sex, he would bring a towel and washcloth into the room with him He indicated that this was not unusual, " [n]ot at all " Afterwards, the towel and washcloth would go into the general laundry with everything else There was a shopping cart in which dirty items were deposited and it was located outside of the bathroom, right next to the rack with the towels and washcloths The Respondent denied ever using a washcloth or towel to wipe his own semen off of [REDACTED] while he was living or staying in [REDACTED] with Sellars

The Respondent agreed that toward April 2005, his relationship with Sellars began to decline He attributed the decline to several things His "suspicion of her abuse of narcotics were great," he could not trust her with some of the items that he carried as an officer, such as his shield and ID card, and the arguments were increasing He said that he made the decision to move out one Wednesday, during the first or second week of

April 2005 He went to her house midday, packed and moved the majority of his items back to Campbell's apartment He left behind a military flight bag with two pairs of pants, two shirts, and underwear

At that point, the Respondent said, he clearly conveyed his intentions of terminating the relationship According to the Respondent, Sellars was annoyed and felt that he was not patient enough to allow her to terminate her "use and abuse" at her own pace He stated, "I was at my wits end pretty much because she had made promises before with regards to that and didn't go through with them So I wasn't really interested in any of that anymore "

He indicated that he had a discussion with [REDACTED] on or around April 2005⁹ about the relationship ending When the Respondent was packing and moving, [REDACTED] asked him where he was going and he told him that he was taking everything that belonged to him back to Campbell's place The Respondent said that [REDACTED] was upset about it

Between April and October 2005, the Respondent said that he and Sellars had some telephone conversations He spent some nights at Sellars' apartment, but that was after receiving calls from her and [REDACTED] saying that there was nothing in the house to eat, or Sellars had no money to get to work, or there was an issue in school [REDACTED] would call to say that he did not eat all day since he did not like to eat school lunches [REDACTED] would then ask where the Respondent was, and most of the time he was at work until 6:00 or 7:00 p m The Respondent said that Sellars and [REDACTED] would have to wait another two or three hours until he could come by and give them money to get something to eat

The Respondent acknowledged that he continued having a sexual relationship

⁹ The transcript reads "April 2008" which is an apparent error as the Respondent had acknowledged that his relationship with Sellars spanned from 2000 to 2005

with Sellars during that period of time They would have sexual intercourse on and off although not as frequently as they did prior to having the issues He still went to Sellars apartment but he spent less time there Whereas in the past he would have spent three days there, he now spent one or two days There were periods where a week would pass and he would not spend any time there at all

He agreed that there was a specific incident in October that resulted in the relationship becoming even less serious Sellars' mother had called and could not reach her Her mother had to do something the following morning and would be unable to babysit [REDACTED] She asked the Respondent if he could come by to get [REDACTED] which he did He then brought [REDACTED] to Sellars' apartment and stayed there He put [REDACTED] to bed and Sellars arrived at about 2 or 3 a m An argument ensued, as the Respondent said it was not his intention to stay that night He had tried to call her but was unable to reach her He said, "I was just voicing my opinion of the fact for her to come in this late with him having school the following morning is just unfair to people who have their own lives to live I was pretty sure at that time she may have talked to her mother and knew [REDACTED] was with me She simply took her time returning

The Respondent stated that the argument escalated into a "push and shove" When he attempted to leave, Sellars asked for money, but he refused to give her any Sellars then went into the kitchen to get a knife out of the drawer as he tried to leave He explained to her that "now at this point because of [his] status," the police would have to be involved if she persisted He said he was able to talk her into putting the knife down and then he left without calling the police and went home

When asked about a similar incident that Sellars recounted regarding movie

tickets, the Respondent stated that the movie tickets she described were almost seven days old. When the Respondent moved out in April, he had left a jacket along with the other articles of clothing and Sellars found the tickets after searching through it. He stated that the subject of their argument was not the tickets, which were seven days old. Rather, the main issue was "the fact that she went and nobody could get her, and it was a school day for [redacted] and [he] had [his] own things [he] needed to do and [he] just thought it was unfair."

According to the Respondent, from the time of that argument to Thanksgiving weekend, he saw her fairly often but they spoke more on the phone. With regards to the Thanksgiving weekend that he and his children spent at Sellars' apartment, the Respondent explained that he worked on the following three days: the Wednesday prior to Thanksgiving, Thanksgiving Day, and the day after Thanksgiving. He spoke to Sellars that Wednesday and her mother invited him to Thanksgiving dinner at her house. After work, he met Sellars at her mother's house for dinner. During that dinner, Sellars asked him if his children would be with him for the weekend and he said yes. Sellars thought it would be a good idea for all of the children to get together and he agreed. The Respondent also picked up two of his nephews and brought them to Sellars' house.

When asked how often he was generally left alone with [redacted] from the time that Sellars moved into the apartment to the time the allegations were made, the Respondent said that it was not too often because Sellars and [redacted] would both be home if he came to her house after work. He finished work at six and it took him an hour to get from [redacted] to [redacted] if he took the train or half an hour if he drove. Sellars would cook and then after dinner, [redacted] would prepare himself for bed by taking a shower or

bath. The Respondent would come over, change, and take a shower or bath before eating dinner with them.

The Respondent acknowledged that there was one day of the week where he was home prior to Sellars being home Monday, which was his RDO (regular day off). If the Respondent was there on a Monday, Sellars would arrive home at 4:30 p.m. [REDACTED] would get out of school at about 3 p.m. and arrive home around 3:30 or 3:45 p.m., if he did not stop to play with some of his friends. Depending on how the train ran, Sellars would not arrive home until about 45 minutes or an hour or an hour-and-a-half after [REDACTED] came home. The Respondent noted that, on Mondays, Sellars would sometimes arrive home earlier or she did not go to work at all if her client was in the hospital.

Of the four Mondays in a month, the Respondent stated that he was alone with [REDACTED] on two or three Mondays, or sometimes none at all because "[it] really varied." He denied ever sexually abusing [REDACTED] in [REDACTED] during any of those Mondays or any other time that he spent alone with [REDACTED]. Nor were there any complaints made to him prior to the date of the allegation that [REDACTED] was being sexually molested in any way.

The Respondent agreed that his aunt lived in the same building and that they were close. He said that Sellars also had a good relationship with his aunt and they socialized. On occasions when the Respondent went away for the weekend and Sellars did not accompany him, she would visit his aunt and sometimes spend the entire weekend "up and down the stairs" with her.

The Respondent said that he worked Friday, on the night before the allegations, and went to Sellars' apartment for the weekend. In addition to himself, the following people stayed that night at Sellars' apartment: Sellars, [REDACTED], the Respondent's son [REDACTED]

his daughter [REDACTED] his nephew [REDACTED] and another nephew [REDACTED], who was the son of his sister [REDACTED]. When the Respondent arrived home, he and the children did Hooked on Phonics which he said they really enjoyed. Then the children played video games with themselves. He characterized it as a good weekend for the children. The children all stayed in [REDACTED] bedroom, [REDACTED] had his own bed and pallets were made on the floor for the other children. As the only girl in the group, [REDACTED] slept in the living room, while the Respondent and Nicole slept in her bedroom.

The Respondent indicated that he went to sleep first that Friday night, before Sellars, since he had to work the following morning. When he left for work on Saturday morning the children were still awake. They slept most of Saturday, almost until the time that the Respondent returned from work.

According to the Respondent, Sellars was home Friday night. He went to work on Saturday from 8:00 a.m. to 4:00 p.m. and when he was done working at 4:00 p.m., the children were awake by then. Everyone went to McDonald's to eat and they worked on Hooked on Phonics once they returned home. According to the Respondent, at about 8:00 or 9:00 p.m. that Saturday evening, Sellars told him that she was going out with some girlfriends. That Saturday evening, everyone who was there on Friday night, with the exception of Sellars, was still present at her apartment.

The Respondent said that he went to sleep late on Saturday, at about 1:00 or 2:00 a.m. since he did not have work on Sunday. Sellars did not return home until about 3:30 or 4:00 a.m., at which point they had a conversation, but "it wasn't an argument at that time." The Respondent said, "I can tell she was out drinking. I can smell the alcohol, so I didn't. The time she came in, I didn't even initiate any conversation with that."

When asked if he had sexual relations with Sellars at that point, the Respondent stated that he did later on that Sunday morning, prior to taking [REDACTED] and [REDACTED] home, but denied doing so at 3:30 or 4:00 a.m. that morning. The Respondent said that an hour after Sellars returned home, she went to sleep. He woke up at 9:00 a.m., which caused Sellars to wake up. She asked him where he was going and he replied that he was going to drop off his children. Before leaving the bedroom, they had sexual intercourse and then the Respondent went to take a shower. The Respondent said that he assumed Sellars went back to sleep since he left her in the bedroom. After his shower, he got dressed and dropped his son and daughter off with their mother who was staying on Astoria Avenue.

Upon his return to Sellars' apartment, he received a call from his sister, who had taken a bus from New Jersey and was coming to pick up her son, [REDACTED]. His sister was at the George Washington Bridge and took a cab from there to Sellars' home. When she arrived, Sellars was not yet awake so the Respondent awoke her because he had cooked breakfast for everybody. According to the Respondent, Sellars appeared well rested and alert. She talked and laughed with his sister and ate breakfast.

At about 1:00 or 2:00 p.m., they all left. The Respondent said that he dropped Sellars off at her mother's place at about 1:00 p.m. [REDACTED] and the Respondent's nephew stayed with him. He, his sister and her son drove back to the George Washington Bridge and he waited an hour-and-a-half for the bus to arrive. The Respondent's nephew [REDACTED] and [REDACTED] then went to Sellars' mother's house to pick Sellars up and they returned to Sellars' house. The Respondent said that on the drive back, he became annoyed because Sellars appeared unable to keep her eyes open, was nodding, and had slurred speech. He believed that this was an indication that she 'apparently had [taken]

something because she was not like that when [he] left her '

According to the Respondent, Sellars could barely stand when they returned home She did not require assistance entering the apartment, but when standing in one place for a long period of time, she began to lean He stated

So she begins to be persistent about me laying down with her, and because of the children being there and I didn t want it to get into any fistcuffs or argument, to keep her quiet I agreed so she would go and lay down Because I didn t want the kids to see her like that

They proceeded into the bedroom, while [REDACTED] and his nephew watched television The Respondent said that he was still fully clothed at that point because he was waiting for someone to pick up his nephew Sellars on the other hand, fell asleep The Respondent did "doze off" but was awakened by the children at about 7:30 or 8:00 p m because they were hungry He then woke up and fed himself and the two boys

At about 8:30 p m , his nephew's stepfather arrived to pick him up The Respondent said that he put on a pair of heavier pants over the pajama pants that he was wearing and he ran downstairs He indicated that Sellars was not awake yet at that time He stayed downstairs and spoke to the stepfather for about 30 or 35 minutes He then went back upstairs after the conversation, and he saw that [REDACTED] was in his bedroom and not in the living room He said that, although [REDACTED] did not see him, [REDACTED] heard the door close

The Respondent went to the bathroom and removed the pants that he had on over his pajama pants [REDACTED] passed by him and he said that he could see [REDACTED] looking for him but he did not know that the Respondent was in the bathroom He denied having a conversation with [REDACTED] at that point, he spoke to him once he stepped out of the

bathroom He told [REDACTED] that he was in the bathroom, as [REDACTED] had already passed by him They then stopped by the closet and engaged in conversation The closet is located in the hallway If one were to open Sellars' front door, there is a little wall where the closet door is located

According to the Respondent, the conversation by the closet involved how 'overexcited' [REDACTED] was about the weekend [REDACTED] spoke about the children being over for the weekend and them working on Hooked on Phonics He said that [REDACTED] loved doing Hooked on Phonics and "if [they] did Hooked on Phonics all day, it wouldn't have mattered to him because he loved doing it In fact, he often gets himself in trouble because he blurts out the answers He was really interested in it" He said that although that was the basis for their conversation [REDACTED] also understood that the Respondent was leaving and did not know why He did not explain why he was leaving, and just told [REDACTED] that he had to

As they were engaged in conversation, [REDACTED] began laughing loudly because the Respondent was "picking at him about the yelling out" during Hooked on Phonics When the Respondent closed the closet door, he saw and heard Sellars open the bedroom door and step out of that room As she walked down the hallway the Respondent and [REDACTED] were still engaged in conversation At that point, he said that Sellars was 'yelling and screaming and hollering" and he asked her, 'What the hell is wrong with you?" When asked if she said anything else, he stated

No First was what the fuck are you all doing My response was what the fuck are you talking about She is like you and [REDACTED] having sex, he is sucking your nipple, you're jerking off [REDACTED] is yelling, Mom, I'm fine He must have said this seven times to her And I'm saying, Nicole what is the matter with you So she turns from us

and now I follow her because now I'm upset about it So [REDACTED] is actually standing in the hallway But he doesn't want us to fight So he is apparently upset as well He is upset about the whole incident as well So I said to her, if this is what you feel you've seen, let's call the police now So she goes, no, no, no, no, no No I don't want to call the police, I just want you to leave Then again she asked for money After that, I am not giving you anything, so I didn't give her any

The Respondent stated that before Sellars came out of the bedroom, he was wearing a white T-shirt with a white tank top underneath since it was cold He wore red and white pajama pants that had a strap, as it did not have a zipper Underneath that, he was wearing underwear He denied that he was exposed at all, and denied that his genitals or nipples were exposed He further denied that [REDACTED] was undressed at all, indicating that he was wearing a white T-shirt with blue shorts that had a drawstring He denied that [REDACTED] exposed himself in any way to the Respondent during the conversation

The Respondent said that Sellars helped him down the stairs with his belongings and he left, but she refused to call the police He did not have a conversation with her at that time because he was "really upset about what she was saying was going on" She helped him down the stairs with his other bag and when they reached his truck, the only conversation consisted of her saying "Give me my keys" He gave her his keys and then he left

He denied having a conversation with anyone else about what happened after he left nor did anyone immediately tell him what happened after he left that Sunday He said that he heard from his sister [REDACTED] and then his niece [REDACTED] on Monday The first people that he spoke with on Sunday night were [REDACTED] and her husband, [REDACTED] [REDACTED] called him on his cell phone and went over to the Respondent's house He drove [REDACTED] to

the area of Sellars' house, at which point [REDACTED] used the Respondent's cell phone to call [REDACTED] [REDACTED] told the Respondent that [REDACTED] said that Sellars caught the Respondent and [REDACTED] having intercourse. The Respondent indicated that he himself did not have a conversation with [REDACTED] regarding the incident.

On Monday, the Respondent spoke with [REDACTED] who said that Sellars called her to say that she caught the Respondent "jerking off and [REDACTED] sucking [his] nipples." The Respondent denied having any further contact with Sellars and [REDACTED] and, at that point, he felt that it was important to notify the Department, which he did. He called his immediate supervisor, a lieutenant. Afterwards, he spoke with his captain to inform him of the allegations made during the conversation with his sister. His captain said he would get back to him, which he did after making an IAB log entry regarding to the incident.

The Respondent agreed that there came a time when he was arrested but he was later acquitted of the charges by a 16-panel jury in Supreme Court. He indicated that Judge Hoffman of Family Court issued a written decision in the case, a copy of which was provided to the Respondent's attorney in this matter (RX D. Decision/Order from Family Court of the State of New York County of [REDACTED] dated April 20, 2009 and signed by the Honorable Douglas Hoffman).

The Respondent denied engaging in the conduct alleged in the five Specifications he was charged with in this matter. With regards to Specification No 3, the Respondent indicated that he did not believe that he was endangering [REDACTED] welfare in applying the lotion on him. As to Specification No 4 he did not believe that he failed to make a mandatory report regarding Sellars' drug use because he never saw her use drugs in the presence of her child nor was [REDACTED] present when the Respondent discovered the drugs in

Sellars apartment The Respondent again denied ever seeing Sellars use drugs in front of her child With regards to Specification No 5, he did not believe that he was endangering [REDACTED] welfare when they were naked in the same room together He stated, [REDACTED] was a very outspoken young man, and so had he been uncomfortable, he would have been sure to make that clear " Lastly, he denied that at any time up until the time that he moved out of Sellars' apartment, anyone had ever accused him of being inappropriate with [REDACTED] in any way

When asked by the Court, the Respondent stated that he did not know [REDACTED] date of birth, offhand He said that [REDACTED] was approximately five or six years old when they first met As per his medical records, the Advocate stated that [REDACTED] date of birth was [REDACTED]

On cross-examination, the Respondent stated that he was not sure how old [REDACTED] was when he developed the skin condition in Virginia he may have been five six or seven He agreed that his relationship with Sellars started in 2000, and that [REDACTED] came back from Virginia in 2000 He indicated that he was living with Campbell at that time and he applied the cream to [REDACTED] in Campbell's apartment, since Sellars took him to the doctor from that location Sellars had spent time with him in Campbell s apartment and stayed overnight, although the Respondent said that she was going back and forth from her mother's house

The Respondent said that he applied the cream to [REDACTED] in the bathroom of Campbell s apartment, and the door would be open since Sellars was also present He denied that other people were present, otherwise Sellars would have probably stepped in and closed the bathroom door He indicated that the people present when the cream was

applied were himself, Sellars and [REDACTED] During the two occasions that he applied the cream, [REDACTED] was not always completely nude but he acknowledged that there was one occasion in which [REDACTED] was nude On that occasion, the Respondent denied that he himself was nude when applying the cream to [REDACTED]

The Respondent agreed that Sellars had taken [REDACTED] to the doctor regarding his pubic and underarm hair, one time prior to their relationship and one time during their relationship To his knowledge, the practice of cutting the pubic hair had not begun prior to their relationship in 2000, and if it had, he had no knowledge of it During their relationship, when [REDACTED] was taken to the doctor, the physician had recommended cutting his hair The Respondent believed that the doctor's visit occurred in either 2000 or 2003, since [REDACTED] went after the incident with his skin condition At that time the Respondent was still living in Campbell's apartment The practice of cutting [REDACTED] pubic hair continued until the end of the relationship, but it was only done when [REDACTED] complained about it He said that Sellars cut his pubic hair twice, but after [REDACTED] got an erection on the second occasion, she asked the Respondent to do it He stated, But it was a family decision We talked about it'

The Respondent indicated that as far as he knew, the practice continued until November 2005, for a period of two to three years, although it was not continuous The Respondent reiterated that after [REDACTED] got an erection when Sellars cut his hair, he began cutting the hair He testified that during the two to three year period, he cut [REDACTED] hair only two times in total in the bathroom He denied that this took place concurrently to showering and denied that [REDACTED] was always completely nude He said that sometimes [REDACTED] would just lower his pants and his genital area would be exposed

The Respondent stated that as per the physician, he used a small comb like the moustache comb used by barbers, and small scissors. When asked how close to the body he actually cut the pubic hairs, the Respondent stated, "Whatever the centimeters of the comb I would cut up against the comb." He did not know approximately how long that was but said that it was the thickness of the comb. He estimated that it was half an inch. The Respondent was asked, "So then you would have to get fairly close to [REDACTED] s genital region in order to do this?" to which he replied, "You would actually have to press the comb against his body, then I put the scissors up against the comb." The Respondent denied ever being nude while doing this.

The Respondent indicated that he and [REDACTED] were not often nude together in the bathroom, this occurred when they were passing each other as [REDACTED] was coming out of the shower and the Respondent was going in. At that point, the Respondent would be coming out of the bedroom he shared with Sellars, which was adjacent to the bathroom. As he came out of the bedroom, he would hold a towel in front of him in his hand to go to the bathroom, as [REDACTED] was coming out of the bathroom. He denied that the towel was wrapped around him and said that as he entered the bathroom, he was still carrying it. On the other hand, [REDACTED] would normally have a towel wrapped around him or he was drying himself off. In order to enter the shower, the Respondent would pass him. The Respondent stated that as they passed each other going in and out of the bathroom, he and [REDACTED] were naked in the same vicinity for 'sometimes seconds.' If [REDACTED] remained in the bathroom to dry himself, the time period was two or three minutes.

When shown DX 5A and 5B, the Respondent agreed that he recognized the photographs and confirmed that the adult male depicted in both photographs was himself.

and the juvenile was [REDACTED] He agreed that neither he nor [REDACTED] was holding a towel in either of those photographs, but that they were both standing nude in the bathroom at the same time He denied that they were passing each other on the way in and out of the bathroom He agreed that they were nude in the same vicinity for longer than a few seconds stating that it would have been for about five minutes because [REDACTED] came back into the bathroom to explain that the Respondent had missed a spot on the top of his head where he had cut his hair

The Respondent denied that he and [REDACTED] were playing in the bathroom during the time that those photographs were taken, but he recalled being asked during his official Department interview what he was doing in those photographs When asked if he recalled answering that he and [REDACTED] were tossing water at each other and played around for about half an hour, the Respondent said that it was afterwards and those photographs were not submitted into evidence After being asked if he and [REDACTED] were in fact in the bathroom nude for half an hour on that day, he replied, "Me, [REDACTED] and his mother His mother was taking the pictures We are obviously closing the door' When asked by the Court, the Respondent conceded that he was in the bathroom for half an hour nude with [REDACTED] at the time He indicated that he asked Sellars to stop taking the photographs, but she took 36 of them, not all of which were in the bathroom He denied asking her to delete them after she took them and denied ever taking showers together with [REDACTED] in the bathroom

The Respondent agreed that when he lived in Campbell's apartment, Sellars and [REDACTED] visited him and at times he was left alone with [REDACTED] there, but not often There were also occasions where [REDACTED] slept over at Campbell's apartment, but he denied that

those were occasions where he and [REDACTED] were alone. If [REDACTED] slept over Sellars would also often be there. He said that he did not recall answering "rarely" when asked during his official Department interview if there was a time that he slept over with just himself and [REDACTED] alone in that apartment, but said he "hardly ever" did so because Sellars usually stayed more often than [REDACTED] did. He conceded that possibly there were occasions where he was alone in the apartment overnight with [REDACTED] until Sellars came home.

The Respondent agreed that there were times when he was at [REDACTED] that he was alone with [REDACTED] there, including overnight. He generally stayed there two to three nights a week, although there possibly were times when he stayed over as many as four nights. He agreed that, while at Sellars' apartment, there were occasions where Sellars took baths but he did not recall the length of her baths although he denied that they were 30 to 45 minutes in length. He did not recall being asked in his official Department interview the length of Sellars' baths and did not recall answering that she was in the bath for half an hour or 45 minutes. He explained that Sellars was not actually in the bath for that length of time. She took half an hour just to prepare to go to the bathroom but he did not recall if she was ever in the bathroom for an hour. He agreed that it would be fair to say that she was in the bathroom 30 to 45 minutes when taking a bath. He indicated that there were times when he and [REDACTED] were in the apartment when Sellars took a bath and that there was a window in the bathroom.

The Respondent agreed that he had moved out some of his belongings when his relationship with Sellars began to deteriorate in April 2005, but he continued to periodically sleep over at her apartment and have sexual relations with her. When he

advised her in April 2005 of his intent to end the relationship. She was upset but did not accuse him then of any sexual misconduct with [REDACTED]. Again, in November 2005, the Respondent advised Sellars of his intent to terminate the relationship. This was right after the Thanksgiving family gathering in which several of his relatives were at the apartment for the weekend celebration.

The Respondent agreed that he has been a narcotics detective for most of his career and was familiar with practices involved in the drug trade. He acknowledged that he met Sellars in 2000 when he was at work performing narcotics-related observations in a known narcotics area. He indicated that he is familiar with the characteristics of parties who use or abuse drugs and he has personally had interactions with such people. He said that he formed his opinion that Sellars was on drugs partly based on his training and experience as a narcotics detective, but also because he had a family member who suffered from drug abuse.

He agreed that, at some point during his relationship with Sellars, he suspected she was a drug user. He said that prior to her move into the [REDACTED] apartment, "I had a strong feeling that she was abusing drugs. We spoke about it." On at least two occasions he saw Sellars with marijuana. Perhaps as early as 2003, he suspected Sellars was abusing drugs, but when he spoke to her about it, she often denied it. His suspicions were based on her behavior including mood swings, her disappearance for long periods of time, her unavailability when he tried to get a hold of her, and her late arrival home. At one point, he suspected that her drug use was not limited to just marijuana.

He agreed that he found marijuana in a sugar jar in the apartment where he and Sellars lived. He did not recall how much marijuana was in there, but it was more than

two bags He stated that as part of the argument that ensued, he brought up the fact that it was disrespectful because he was a police officer He denied telling her to only keep small amounts of drugs in the house in case of it being discovered, as it would not be a serious charge He acknowledged that he was aware that possession of a small amount of marijuana is considered a less serious charge than large amounts of marijuana should the drugs be found in a residence He stated that as a father, he was concerned for [REDACTED] when he found the marijuana in the sugar jar, but he did not recall [REDACTED] being in the residence when he made the discovery In addition, he was concerned that Sellars' drug use could affect [REDACTED] stating that he was somewhat concerned with her actions towards [REDACTED] that were based on her drug use He agreed that she was impatient with [REDACTED] but said that she exhibited impatience even before the Respondent knew that she was using drugs

The Respondent indicated that he had taken steps, albeit unofficial ones, in order to get [REDACTED] back from Virginia He explained that he had performed a Google search of the uncle's address that Sellars had provided He also searched the name of the aunt through anywho.com He acknowledged that although Sellars eventually went to the authorities based on the conversation that they had, he was the one who initiated the search, suggested that she go to court, and urged her to go to the doctor upon [REDACTED] return He denied that Sellars initially refused to do so, explaining, It would be more she felt that because of the time lapse in him receiving the medical attention, she didn't feel that it would be anything they can do for him any way, but I just thought he should go' He agreed that he felt differently than she did and he urged her to take [REDACTED] to the doctor He indicated that he took the photographs due to his concern over [REDACTED]

condition

The Respondent said that on the night that Sellars made the accusations against him she seemed upset and there was '[m]ore screaming than anything else" When asked if at that time, she indicated to him that she saw [REDACTED] sucking on his nipple and him masturbating, he replied, "I don't recall what her exact words were but one of the things was we were having sex" He conceded that one of the things that Sellars initially said was that [REDACTED] was sucking on his nipple and after making this accusation she asked him to leave the apartment He indicated that he did so and when he was at his vehicle, she took her keys back from him

He agreed that Sellars asked him for money that night, but denied that she said that if he did not give her money, she would report the incident to the police He further denied that after Sellars reported the allegations to the police, she told him that she would recant if he gave her money, stating that he never spoke to her after the allegations were made The Respondent agreed that Sellars testified in his criminal case trial, but he denied that she contacted him after that to say that she would recant if he gave her money She also testified in the family court trial To his knowledge, she has never sued him regarding these allegations nor has she asked for a part of his pension from the Department

The Respondent agreed that it was his belief that Sellars put [REDACTED] up to these accusations stating, I didn't indicate that's what she did, but that's my belief" He agreed that he had indicated that in a prior interview He had also indicated that Sellars was upset with him because he was ending their relationship He said that he did not pay for her bills entirely, but he did provide financial support He denied paying the rent for

her apartment, but said that in addition to paying for her utility bills he also provided food and shopped for them He recalled saying during his official Department interview that he only paid for Sellars' utility bills when asked what bills he paid for her, but he explained that shopping for food is not a utility He agreed that in a prior Department interview, he indicated that he only paid the utilities since it was the only other bill that was not being paid

The Respondent denied that he was familiar with Social Services Law Title 6, the mandatory reporting statute, and stated, " but I know I am governed by being a police officer that I am required to do so " He was aware that the statute requires notification in cases of suspected child abuse or maltreatment He denied ever calling the police or any other government agency, such as ACS, to report Sellars drug use, although he was not sure "if the rehabilitation center that [he] tried to get her into would be considered an agency He explained that family members often do not report drug abuse, not so much out of concern for the family member, but "because of the love of the individuals who is using the drugs I was in love with Nicole so I wouldn't want to see her go to jail I would rather see her get the help, and that's what I was trying to do " He also denied reporting Sellars drug use to IAB

The Respondent agreed that on the morning of the incident, he and Sellars had sexual relations He indicated that after having sexual relations, he would usually take a shower and then wipe himself with a "bath rag," which is what he did on the day of the incident He stated that after wiping himself with the bath rag, he would place it in the laundry bin in the hallway, along with the general laundry

Upon being shown DX 3G and 3O, the Respondent agreed that he recognized the

shopping cart where the general laundry was placed When asked if that was the laundry basket in which he would have placed the bath rag, he replied

That would have been done whenever she decided to go to do the laundry It didn't necessarily have to be the same day I took a shower So if she decided to go to do the laundry on a Saturday and we had sex on Thursday, the bath rag would most likely stay in the bathroom until she gathered all the laundry to do the laundry and would go into the shopping cart

He further explained that there was not always a three or four day lapse in placing an item in the laundry basket He stated, "It could be, you know, if I didn't use the rag anymore, I put it in the laundry myself If it remained in the bathroom and she went to the laundry, she did it '

The Respondent agreed that on the day of the incident, he took a shower but he did not use a towel prior to entering the shower He went directly into the bathroom but did not recall if he wrapped a towel around himself beforehand. After refreshing his memory, the Respondent agreed that he had said during his prior Department interview that he had wrapped a towel around himself before entering the bathroom since there were children there He said that there should have been semen on his person if he wrapped the towel around himself tightly enough, as there was semen on that towel from their earlier sexual relations The Respondent stated that he did not recall the size of the towel but it was 'long enough to go around [him] and bring [his] hands together" He denied that it was the size of a face cloth

The Respondent denied informing IAB of Sellars' allegation that night, but he did so immediately after speaking to his sister the next day He denied that he called IAB only after his sister informed him that Sellars was taking █ to the hospital and denied

that his sister told him that Sellars was planning on calling or had called the police

The Respondent denied performing oral sex upon Sellars when they had sexual relations earlier on the day of the accusation

Detective Theodore Campbell (Retired)

Campbell testified that he retired in 2005 as a third grade detective, after having worked in the Department for 20 years and a week. He was last assigned to the 33 Precinct Detective Squad and previously worked at Manhattan South, Manhattan North, Manhattan South Narcotics, and Brooklyn North SATCOM. He currently teaches martial arts.

Campbell acknowledged that between 2000 and 2005 and thereafter, the Respondent maintained a residence with him, which was the Respondent's primary residence. Campbell met Sellars and [REDACTED] sometime in 2000, and Sellars stayed with the Respondent in his apartment during that time period.

Campbell indicated that when one walks into his apartment, there is a foyer/dining room. To the right, there is a door that leads to the kitchen. Straight ahead is a doorway to the living room. To the right, also leading off of the dining room, is a hallway that leads to the one bedroom, which is Campbell's bedroom. Down that same hallway is a bathroom. Campbell agreed that the Respondent stayed in the living room, as did Sellars when she stayed with the Respondent. On occasions when [REDACTED] stayed at the apartment, he stayed in the dining room/foyer area. Campbell denied that the living room and his bedroom shared a common wall. Campbell stated that the living room was approximately 15 feet from his bedroom and the dining room where [REDACTED] stayed was approximately 16 feet from his bedroom, in "[a]bout the same area".

Campbell agreed that he was involved in a relationship at that time and his girlfriend had keys to the apartment. He further agreed that she could essentially come and go as she pleased. Campbell indicated that between 2000 and 2005, he primarily resided in his apartment and not elsewhere. He denied having any reason to believe that Sellars was using marijuana in his apartment nor did he ever discover any evidence of drugs or drug use in his bathroom. He agreed that there was only one bathroom in the apartment.

Campbell stated that, from time to time, he had a bathmat or towel in the bathroom, but it was not permanently on the floor. He indicated that one would not be able to hide something under the bathmat and expect it not to be found because it was a small square mat, "not even a rug." He denied ever finding marijuana, roach clips, or anything of that nature. Campbell indicated that his bathroom has a window and his bedroom has two windows, one of which shares the same wall as the bathroom. Campbell acknowledged that he is aware of the smell of marijuana as he used to work in Narcotics. He denied ever smelling marijuana come out of the bathroom or the bathroom window of his apartment.

To his recollection, Campbell testified that [REDACTED] was not left alone with the Respondent very often throughout the times that Campbell was home. He stated that it rarely occurred. Campbell denied observing the Respondent act inappropriately towards [REDACTED] in any way during those occasions, nor did Campbell walk in on anything that he felt was sexually inappropriate between the Respondent and [REDACTED]. Campbell further denied ever seeing the Respondent and [REDACTED] naked in each other's presence, nor did he ever hear Sellars or [REDACTED] make any complaints about the Respondent being sexually

inappropriate with [REDACTED] Campbell agreed that there were occasions when the Respondent's children came to the apartment and they interacted with [REDACTED] at the same time. Campbell denied ever hearing allegations or seeing the Respondent acting inappropriately in any way with his own children.

Campbell stated that he has known the Respondent "since 2000 roughly little before 2000."

On cross-examination, Campbell agreed that it was rare for [REDACTED] and the Respondent to be alone in his apartment together. When asked if there were times when they were alone together in his apartment, Campbell stated, "Well, when I'm at work, I wouldn't know. If he came with [REDACTED] I wouldn't know that." Campbell was then asked, "If you weren't at home and you were at work, you wouldn't know what was going on in the apartment at that time, would you?" to which he replied, "No, I wouldn't know. I would be at work."

Dr. Lawrence Rosenberg

Rosenberg did not testify at this proceeding. He did testify at the Respondent's criminal trial. A copy of the transcript of Dr. Rosenberg's testimony from the criminal trial (RX C1), with accompanying slides (RX C2), was received into evidence. The Advocate and the Respondent stipulated that Rosenberg, who was qualified in Bronx Supreme Court as an expert in this case, be deemed as an expert in this proceeding.

Rosenberg testified that he is currently employed as a pediatrician in Johnstown, Pennsylvania and has been so employed since August 1977. In that capacity, he provides medical treatment for babies, newborns and children up to the age of 18. He also, since

1977, has spent approximately 10 to 20 percent of his time in evaluating alleged child abuse. Usually this is done by referral from the District Attorney's Children Youth Agencies of the neighboring six to eight counties, covering a population of 500,000.

Prior to entering his practice Rosenberg finished his residency, as a pediatric resident, at the University of Colorado, Denver from 1974 to 1977. Prior to that, he did his medical training at New York University, Bellevue in Manhattan from 1970 to 1974.

Rosenberg said that in Colorado he had a pediatric residence and that the Chairman of the Department of Pediatrics, Dr. Henry Kemp was the founder or the originator of the study of child abuse in the 1960s. He explained that a portion of his training was with the first mentor in this field. When he went to western Pennsylvania, there was a void in that area and he became involved and set up a child protection team and through the years he has been asked for his advice.

He explained that the general evaluation and treatment of child abuse is not just a medical or social work or nursing issue. It involves everyone together. Based on the model in Denver, he set up a center at his hospital, Cauma Hospital which, he said, is the largest medical center between Harrisburg and Pittsburgh. He set up this unit in 1978 and they currently do about 150 to 200 evaluations a year. Since 1978 he has examined approximately 5,000 abuse allegations.

Rosenberg said that he is a member of the American Academy of Pediatrics and a charter member of the section on child abuse and neglect. He worked for 15 years in the Attorney General's Office in Harrisburg, the state capitol, on the state team of child abuse and neglect. In that position, the different county district attorneys would bring their difficult cases to the team to evaluate. He would also meet with legislators to have

feedback on establishing state law

Rosenberg has licensed in Pennsylvania to practice medicine since 1977. He has lectured "many times" in the field of child abuse, to general audiences medical doctors, nurses and foster parents. He once served as mentor to young district attorneys from Pennsylvania in the area of child abuse.

Although he is not an academic, he has published with the Pennsylvania chapter of Academic Pediatrics where he developed a teaching slide in child abuse that is used in more than 31 states. He has testified as an expert witness, he said, "probably more than 500 times." Most of this was in criminal courts but some were in civil cases. He said he probably testified in about 350 criminal cases, about 85% of the time for the prosecution.

Rosenberg acknowledged that he is being paid for his time away from the office for his appearance in court, at a rate of about \$125 per hour, billing from the time he left his home until he returns after his testimony. Rosenberg stated that he has testified in various New York State courts. Without objection, Rosenberg was designated an expert witness.

criminal trial) and that he had read [REDACTED] testimony from what he believed was a previous trial (apparently, the Family Court case). He recalled that [REDACTED] had said that he had been the victim of ongoing anal penetration twice a week for a three-year period lasting up until the alleged abuse was discovered.

Rosenberg acknowledged that he had not examined [REDACTED] and it was his understanding that Miller had not examined him either. He agreed that Miller had said that the medical findings in [REDACTED] medical examination of November 29, 2005 were

consistent with the abuse that [REDACTED] had reported Asked to comment on Miller's conclusion Rosenberg stated, "Based on my experience, knowledge and prior involvement in this field, I find that to be hard to believe "

Reminded that Miller had testified that the human anus and anal sphincter stretch to accommodate the passage of stool, Rosenberg explained that the consistency of stool is different than that of an erect penis and that another difference is that the penis is going into the anus rather than having the sphincter push it out He noted that during normal elimination

we relax the muscle, we put abdominal pressure and the feces leaves our body In a situation of sodomy, we are talking about this tight muscle and an object being placed unnaturally within the body, so the forces are completely different No reasonable person, especially a small child, wants to be a victim of this type of penetration, thus the muscles are held tight together, and the process of twice a week, and if we say 50 weeks in a year, 150 weeks in three years, that's 300 times up until the time the child was examined at the [REDACTED] Hospital, to have no changes in the body, based on what I've seen, it's not consistent The body would have changed over this long protracted period of time

Rosenberg also testified that the anal muscle is not circular He said that it is a muscle going from "12 to 6 and 6 to 12 [as in positions on clock] and it is meant to distend and perform normal functions He noted that repeated anal penetration of the anus by an erect penis approximately an inch, an inch and a half, two inches, the muscle is not built like that and any muscle in our body that gets stretched over a period of time, it loses tone " He went on to say

So, if we have this type of situation where this particular structure of the body continually gets stretched out, eventually tone gets lost and therefore, both by appearance to a forensic doctor doing the exam, both, and secondly by

the function that the anus is supposed to perform by nature it's changed, it's not the same as it was before

Rosenberg agreed that he is a member of the American Academy of Pediatrics and is a charter member of the section on child abuse and neglect. He stated that he is familiar with the publications and guidelines put out by that section. He stated that there is a publication by the American Academy of Pediatrics entitled "The Visual Diagnosis of Sexual Abuse." He indicated that the 1998 edition he had with him was the most up to date. He said the slides show the normal appearance of body structures, disease variants that may appear to be abuse but are not, and abuse.

There was then a display of various slides. Rosenberg described the first slide as a picture of a prepubescent child where injury to the anus had healed. He stated that this was not an "acute" event. The second slide, he indicated, showed what one might expect to find with repeated anal penetration. The third slide he said, also demonstrated a sphincter muscle that was stretched out. He said this again was a sign of repeated abuse over a long period of time.

Discussing Miller's testimony, Rosenberg agreed that mucus tissue heals relatively quickly but he asserted that stretched muscle and the deeper tissue do not heal as well. The next slide showed, he said, some healing over time. He said that, especially with young children, repeated and chronic sexual penetration would leave some physical evidence. Regarding the fifth slide, Rosenberg added, what is apparent is distention.

Noting that all parts of the body grow with age, Rosenberg asserted that one would see more signs of abuse in younger children than with older children.

Rosenberg noted that young children are pre-sexual and do not have sexual thoughts until after puberty. He noted that the anus is generally kept in a tight position.

except when a person is eliminating waste He noted that a child, as opposed to an adult voluntarily having anal sex, would keep the muscle tight He noted that this would be a painful event for the child

With regard to the sixth slide, he noted that it showed an anus where the muscle had lost tone The seventh slide was the same situation, but worse He said it depicted a chronic victim of abuse The next slide Rosenberg described as still worse

Rosenberg stated that he has been in the courtroom in regards to about 25 cases of substantiated male sexual abuse He said that the anal scarring was very predominant He noted that scarring is not going to disappear He also noted seeing distended muscles, as noted in the slides He noted, however, that the healing period was variable and could occur within a matter of months, but would not occur in a matter of days, especially in a chronic abuse situation

Rosenberg noted that abuse is often not promptly reported and that oftentimes the child becomes withdrawn and angry He said that the child's behavior is changed right from the beginning because the experience is awful He said that often the child strikes out or behaves bizarrely or acts out sexual events on other children He said that a responsible teacher will notice something wrong and report the matter to the responsible agencies He stated

So there's a delay in time, but often it's the child's behavior which is the initiating aspect rather than somebody on exam picking it up Unfortunately, only four percent of all child abuse is reported by doctors Most of it is from people caring for the children within agencies or schools and then it comes back and then it gets evaluated from there

Rosenberg stated that, in a child between the ages of eight and eleven who has

been the victim of anal sexual penetration around two or three times a week over the course of those three years, he would expect to see distention (in the sphincter muscle) and stool leakage. This would be apparent in the underwear and someone doing the laundry the mother for example, would notice it. He said the smell caused by waste in his pants would be embarrassing in school and other settings where he was with other children. Further, the indignity and unhappiness of the abuse would cause the child to act out in some way.

Referring to the Journal of Forensic Sciences, Volume 48, Issue 6 of November 2003, Rosenberg stated that the article in that journal looked at the abuse from a different angle. They used fifty cases where the adult male abusers admitted to their conduct. Rosenberg pointed out that this was more reliable than even court cases because the sodomy was confirmed by the abuser. He said what the study reported in the journal found was that when the victims were evaluated even at a distant point in time, 94% of them had abnormal exams.

On cross-examination Rosenberg agreed that the depth of penetration would be a factor in assessing abuse. He said that the tightness of the anus would require that a penis be erect before it could obtain penetration. However, it would foreclose the possibility that someone might attempt to insert a semi-erect penis into the anus. He noted that the head of the penis is generally the widest part and it would cause the most distention. He agreed that he had said that younger children would sustain the greatest injury. He agreed that some people are just bigger naturally and therefore would have a larger anus. He stated that all eight-year-olds he has seen are pre-pubescent.

Looking at slide number one he agreed that the person depicted had pubic hair.

and therefore was post-pubertal He indicated that this slide was of a sixteen-year-old boy living in a group home who had engaged in voluntary anal intercourse twenty-four hours prior to the examination

Rosenberg agreed that he had not shown a large number of slides that were normal

Referring to slide number two he agreed that the significance of this slide was that there was no dimpling even though there was a distended anus He said the approximate age of the person in the slide was eight

With regard to slide number three, Rosenberg agreed that he had said there was interior damage He explained that this could be determined because one could see that the muscle is not tight and that it shows deep areas where the tissue had changed He agreed that this could be observed with a medical scope, or anoscope, which he said is a metal tube with a light on the end Rosenberg said this is not an instrument he ordinarily uses in his practice

With reference to slide number five, Rosenberg stated that scarring from anal abuse occurs at the six and sometimes twelve o'clock positions He agreed that as a result of loss of tone in the muscle, there might be an inability to retain stool He said that the cure is to end the abuse and allow the body to heal Until that happens, treatment would be wearing a pad or something

Rosenberg agreed that about 10 to 20% of his time is spent evaluating child abuse Of that, he said that 90% is sexual abuse and about 10% is physical abuse or neglect He agreed that his testimony in Pennsylvania has been in six counties He said the last time he testified in Bedford County was, he thought a couple of years ago He

had not gone to Somerset County for several years

He agreed that he had worked for the Medical Legal Child Abuse Advisory Panel in 1990 and he stayed there for about 15 years. He acknowledged that he was asked to step down and he said the reason was that he had done a defense case in Gettysburg. He acknowledged that was not the first defense case he had done. He agreed that the Board would hear difficult cases brought to them by law enforcement. He agreed that the Board made its assessment as a group. He agreed that the Board was made up of legal as well as other medical experts. He agreed that in some cases they felt more evidence was needed.

Gettysburg, he agreed, was in Adams County. He agreed that the testimony he gave about the percentage of children who he would expect to see with anal injuries was based on his own education, training and research. He denied that he was asked to step down from the Board because the testimony he gave in Adams County was against the weight of the research, training and experience of his peers.

Rosenberg said that he believed he was asked to step down from the Board in 2005. He agreed that he had stated that he had been a mentor to young ADAs training in sexual abuse. He said that was in the 1990s. He recalled that they brought in several dozen ADAs from around Pennsylvania and it was held at a university.

He testified that the initial response of a child being abused would be very rapid but over time the person would "get sort of weary" and it would become a chronic state. He said the most significant response would come at the beginning. He agreed that, over time, victims would relax and accommodate what they were already expecting. He agreed that the accommodation would be a way of avoiding pain. Pointing to one of the

slides, he said that the person involved, whose anus was already distended, would not have increased pain because the muscle was already stretched out Rosenberg testified that, of the 25 cases he testified about, he always saw some injury or distention He did agree that he had seen cases where there were allegations of abuse with no injury He agreed the possibility existed that there could be repeated abuse with no injury He agreed that, in one study where there were admissions of abuse by the perpetrators, only 32% of the victims had some sort of injury Rosenberg agreed that some anal injuries heal and the scar is subsumed into the folds of the anus itself, depending on where the scar is

Rosenberg indicated that it was his observation that often when children did not report, it was because the perpetrator threatened them He said in most situations they would tell their parents, but after a long delay He said that only 4% of cases are reported by doctors, most, he said, are discovered by other agencies based on the child's behavioral changes

FINDINGS AND ANALYSIS

Specification Nos 1 and 2 allege misconduct under two different sections of the penal law based on essentially the same facts Both specifications charge that the Respondent "repeatedly engaged in oral and anal sexual conduct" with [REDACTED] This conduct allegedly occurred between August 1, 2002 and November 29, 2005, a period of three years At the beginning of this period of time, [REDACTED] was eight years old and at the end, he was 11 years old

Specification No 1 charges the crime of Course of Sexual Conduct Against a

Child in the First Degree, which, pursuant to statutory language, involves a child who is less than 13 years of age and a perpetrator who is over 18 years of age Specification No 2 charges the crime of Endangering the Welfare of a Child, which involves a child less than 17 years of age The Court notes that both [REDACTED] and the Respondent met the age criteria in both specifications

The fact that must be determined for these two specifications is whether the Respondent engaged in sexual conduct, including anal and oral intercourse with [REDACTED] The Respondent has denied engaging in any such conduct

While there were a number of witnesses in this case, only three people were eyewitnesses to any of the actual alleged facts [REDACTED] and the Respondent, as participants in the alleged conduct, are, of course, the primary witnesses The third eyewitness is Sellars, [REDACTED] mother and the then-girlfriend of the Respondent, who claims to have witnessed an inappropriate encounter, albeit one that did not involve anal or oral sex as alleged in the specification The key witness for the Department, [REDACTED] did not testify at this proceeding He did testify at two previous proceedings the Respondent's criminal trial where the Respondent was apparently charged with the same conduct as embodied in these two specifications, and a Family Court action seeking protective orders against the Respondent, again based on the same conduct Neither transcript of [REDACTED] testimony was offered in evidence, nor was a transcript or tape of [REDACTED] interviews at [REDACTED] Hospital available for this Court

Notwithstanding the fact that the central witness, [REDACTED] did not testify in this case the Department made a determined presentation most particularly through the use of two distinguished expert witnesses

The Respondent presented a very strong challenge to the Department's case. Not only did it offer expert testimony of its own but the Respondent offered the written decision of the Family Court judge in which that judge explains in detail, the basis for his decision.

The facts of the case are not complicated. On Sunday, November 27 2005 Sellars fell asleep in the afternoon following a Thanksgiving weekend of family gatherings. When she awoke, she went down the hall of her apartment and said she saw her boyfriend, the Respondent, engaged in inappropriate activity with her then-11-year-old son. Specifically, she said she saw [REDACTED] kissing the Respondent's nipple while both males were masturbating themselves. The Respondent denied then, and denies now, that was what was going on. He claimed that he was talking with [REDACTED] about the game Hooked on Phonics, and that he was not engaged in any sexual conduct with him. Both the Respondent and Sellars agree that Sellars told the Respondent to leave her apartment. The Respondent claimed that Sellars at that point asked him for money. Sellars denied this but admitted that she went to Respondent's aunt, who lived in the building, and borrowed twenty dollars from her. Both agreed that the Respondent left the apartment.

Sellars admitted that she then bathed [REDACTED]. She also admitted that she went out to get marijuana, cigarettes and brandy. She said she had tried to smoke the marijuana but was unable to. She also stated that later that night she brought several relatives over and the next day she brought other family members over to the apartment to speak with [REDACTED] before the matter was reported to the police and the child was taken to [REDACTED] Hospital for an interview.

During the interviews [REDACTED] we are told, claimed that the sexual conduct went

back to a time, three years earlier, when he had been brought back to New York by Sellars, with the Respondent's help. Prior to that, members of [REDACTED] father's family had taken him to their home somewhere in the South. [REDACTED] father, it was established, was incarcerated.

When [REDACTED] returned to New York, his body was covered with sores. Pictures of [REDACTED] in this unfortunate condition are in evidence (DX 8). It is alleged that during the treatment of these sores the Respondent applied medication on him, including apparently his genitals, which [REDACTED] referred to as his private parts. This then was the starting point of the alleged sodomy.

The interviews also established other points at which there was allegedly inappropriate contact between the Respondent and [REDACTED].

During the three-year period, for which no precise dates were provided, [REDACTED] had a problem with premature growth of pubic and underarm hair. This made him feel uncomfortable and both sides agreed that a doctor told Sellars to cut the hair. Sellars attempted to do this herself and found herself embarrassed when [REDACTED] got an erection. Thereafter, the Respondent cut [REDACTED] pubic hair.

Another instance of alleged inappropriate contact occurred when the Respondent was naked in the bathroom with [REDACTED] at a time when he was giving [REDACTED] a haircut. Again the date is not specific, but there is solid evidence that this occurred as Sellars took pictures of the event (DX 5A, 5B and RX B).

While Sellars saw no problem with any of these events at the time of their occurrence, the Department alleges that they are part and parcel of the sexual abuse of [REDACTED] specifically in something the expert witnesses described as "grooming."

Grooming was defined principally by Dr Miller, as a process by which a child becomes familiar with an adult and the child learns to accept closer emotional and physical contact with the abuser

The argument that these instances of contact with [REDACTED] private areas or, as in the last instance, simple nudity, were grooming is not itself proof that the Respondent engaged in sexual abuse and acts of sodomy with [REDACTED] Some or all of these acts would certainly constitute grooming if the Respondent, in fact, did engage in sexual abuse in the form of sodomy but they are not direct proof of it Put another way these acts could reasonably be considered as some circumstantial evidence that the Respondent sexually abused [REDACTED] but more is needed to establish that fact

In this regard, there are, of course, the claims made by [REDACTED] himself There are unfortunately several problems with the evidence presented to the Court in this regard As noted, [REDACTED] did not testify in this case One must assume that his previous testimony in both the criminal court and Family Court proceedings was recorded and transcribed but no transcript of his testimony has been presented to this Court

The Department's case relies on the statements made by [REDACTED] during the forensic interview conducted at [REDACTED] Hospital Apparently, [REDACTED] was taken to and first interviewed at [REDACTED] Hospital on Monday, November 28, 2005 The hospital records (DX 6) indicate that he was registered in the hospital at 3:51 p m that day The full forensic interview was conducted the next day November 29, 2005

The only witness at this trial who was present for the forensic interview was Morton Morton did not conduct the interview or participate in the interview He was in an observation room with others including another NYPD sergeant, an ADA and a

representative of ACS Morton did not take notes and he testified he was surprised to discover that the interview was not recorded in any way This indeed is surprising given the elaborate set-up for such an interview at a facility specifically designed to accommodate the interview of child abuse victims

Morton provided only general information about what [REDACTED] said [REDACTED] recalled that the abuse took place at the residence of the Respondent's roommate, Campbell and at his mother's apartment after she obtained that apartment in [REDACTED] Morton described different acts of sodomy alleged by [REDACTED] and said that [REDACTED] estimated a total of 50 encounters This is somewhat different than what is recorded in the medical records, where the notation is that [REDACTED] said that "Cliff put his privates in his butt about 50 times and in his mouth about 30 times "

There was no witness presented at this proceeding to discuss the interview conducted the day before, on November 28, 2005, but such an interview is mentioned in the medical records in which it is noted that [REDACTED] said, "He (Cliff) put his stuff (penis) in my mouth and in my butt and [illegible] on my back '

Miller testified as an expert witness He did not interview [REDACTED] and, as far as this Court can tell, had no direct contact with him Most of Miller's testimony involved explaining the efficacy of the forensic interview and the reliability of the statement made by [REDACTED] at that interview

The Respondent offered in evidence the written decision of the Family Court judge in the proceeding held there That litigation involved an effort by ACS to obtain orders of protection against the Respondent on behalf of [REDACTED] and the Respondent's own minor children The basis for seeking these orders of protection was the allegation that

the Respondent had sexually abused [REDACTED] and the judge's decision specifically addressed that issue. The Family Court judge dismissed the petition for lack of evidence.

At this point, it is appropriate to discuss the relationship between this and other legal proceedings regarding these allegations of abuse by the Respondent. The Respondent was the subject of criminal charges and after trial he was found not guilty. That verdict has no impact on this adjudication. The reason is simple: the burden of proof in a criminal case is beyond a reasonable doubt, a higher standard than is required in this forum, which is a preponderance of the evidence. The fact that a jury found the evidence was insufficient to establish the facts beyond a reasonable doubt does not exclude the possibility that it might be sufficient to establish the facts to a preponderance level.

The Family Court ruling, however, is based on a preponderance standard. Because the purpose of the Family Court litigation and this litigation are different, and because the moving party is different, this Court is not bound by the ruling of Family Court. This Court does, however, believe that the factual determinations by the judge in that case merit strong consideration. This Court finds the Family Court decision of particular importance because the judge there heard testimony from [REDACTED] and provided a detailed analysis of that testimony.

The strongest testimony before this Court in support of [REDACTED] credibility came from Miller, who stated that he believed that there was a good degree of medical certainty that [REDACTED] had been sexually abused. This conclusion, however, was based on a review of the medical records and specifically, Miller said, on Dr. Shukat's notes. The basis for this conclusion was he said the fact that the child, [REDACTED] was consistent over two days.

He also spoke about [REDACTED] demeanor, which he did not see himself

The Family Court judge came to a totally different conclusion about [REDACTED] consistency or, in his view, the lack thereof.¹⁰ The major difference between the Family Court judge and Miller is that the Family Court judge actually saw and heard [REDACTED] over several days during the hearing in his court. He noted that, during [REDACTED] cross-examination, numerous questions were answered with the phrase, "I don't remember." He further noted, "Whenever [REDACTED] was confronted with a question that took him out of what appeared to be a prepared description of events, the child's body language would change perceptibly and he would often mumble a response." On this issue the Family Court judge also noted, "It became clear that once [REDACTED] was compelled to stray from basic questions concerning the alleged sexual assaults, the testimony quickly deteriorated into inconsistent and incredible statements, finally reaching the point where the witness stated that everybody lies, anyway, including his mother."

The Family Court judge explained [REDACTED] unreliability by noting that [REDACTED] had said at one point, that every time they had sex they had oral sex and then later he said that it only happened sometimes. The Family Court judge also mentioned in his decision the fact that, while it was claimed that [REDACTED] did not outcry because he was afraid of the Respondent, at one point in his testimony [REDACTED] stated that he was not afraid of the Respondent or his gun. The judge noted that "[REDACTED] provided at least three different versions of how respondent initiated sex on November 27, 2005." He also expressed concern that [REDACTED] had been coached, citing the fact that near the conclusion of one day's testimony he was unable to estimate the size of the Respondent's penis, although he

¹⁰ All references to the finding of the Family Court Judge, Douglas E Hoffman can be found in his written decision, which is in evidence (RX D)

claimed to have held it on a nearly daily basis When [REDACTED] returned to the court the next day he volunteered an answer to the previously unanswered question of size only to be stumped again when asked about the width of the Respondent's penis

There is simply nothing before this Court that would challenge the Family Court judge's findings regarding [REDACTED] testimony There is no video or audio recording of either the initial interview at [REDACTED] Hospital or the forensic interview conducted the next day at that facility Miller was not present for the interview and relied solely on the medical write up which is merely a summary Morton, who was present at the forensic interview is not an expert He took no notes and testified from memory about an event that occurred five years earlier He expressed surprise that no recording of the interview existed

In point of fact, the most detailed analysis before this Court of what [REDACTED] said is in the Family Court judge's decision Under the circumstance, the best and most reliable assessment of [REDACTED] testimony is that of the Family Court judge That judge found [REDACTED] not credible

There is also the issue of expert testimony that merits discussion in this case The Department produced two expert witnesses The Respondent presented a transcript of the testimony of one expert witness Each expert witness presented impressive credentials Two were recognized by this Court as expert witnesses in the field of child abuse and the Respondent's witness was properly recognized as an expert in that same field by the judge in the Respondent's criminal trial

One of the Department's expert witnesses, Dr Heller, provided testimony about delayed reporting by the victims of child abuse While his testimony was both interesting

and informative in explaining the phenomenon of delayed reporting a concept this Court certainly recognizes, it provided no evidence that would help determine if [REDACTED] was, in fact, the victim of abuse. While it is possible that [REDACTED] did not report the alleged three years of abuse for the reasons Heller stated, that does not prove that he was abused during that period. It is equally possible that the lack of reporting was due to the fact that he was not abused. Indeed, on cross-examination, Heller essentially agreed that this was the case.

As has already been noted, Miller provided very significant testimony about the medical report prepared at [REDACTED] Hospital and why he believed [REDACTED] was truthful. What needs to be discussed at this point is the testimony he gave regarding the physical examination of [REDACTED].

Miller acknowledged that the physical examination of [REDACTED] indicated that there was no physical evidence of sexual abuse, specifically there was no physical evidence of anal penetration. He testified that it is not uncommon to find such evidence and he has rarely seen it in cases he has handled. During this trial he noted that the mucus membrane in the anus rapidly heals.

The Respondent provided a transcript of the testimony given by Dr Rosenberg at the Respondent's criminal trial. It should be noted that while this is hearsay evidence because Rosenberg did not testify personally before this Court, it merits strong consideration as evidence in this case. The reason for this is that the issues he testified about were identical in the criminal trial and this proceeding and Rosenberg was subject to rigorous cross-examination by an ADA.

Rosenberg testified that he had read Miller's testimony at the criminal trial which

was apparently similar to his testimony at this proceeding, and he disagreed Rosenberg testified that, given the number of times [REDACTED] claimed he was anally sodomized and his age there would most certainly be physical evidence most likely seen in the loss of elasticity in the sphincter muscle

Both Miller and Rosenberg are eminent experts in the field of child abuse and both have extensive experience in that field. There is simply no way that this Court can say which expert is correct regarding this issue. Examining the testimony of each of these experts more closely, part of the difference may be because they are using different factual assumptions for their opinion.

Miller's testimony is based on an assumption that there were no more than 50 anal penetrations over the three-year period of the alleged abuse. This is consistent with the two figures given during the forensic interview. Rosenberg based his expert conclusions upon an estimate of over 300 anal penetrations during the three-year period. That figure apparently comes from a review of [REDACTED] testimony at the criminal trial in which [REDACTED] indicated that he had been anally penetrated two times a week for a three-year period. In his decision, the Family Court judge noted that, at one point in his testimony there, [REDACTED] stated that the Respondent forced him to have anal intercourse 300 times annually for three years (see RX D p 16).

These widely varying statements by [REDACTED] obviously have significant impact on the conclusion of the experts as to whether there would be physical evidence of abuse. More importantly, they underscore the serious credibility issues regarding [REDACTED] testimony. Of course, no one expects a victim of child abuse to know exactly how many sexual encounters have been forced on him or her and this Court notes that even one such

event would be sufficient to result in a finding of guilt. But the wildly varying testimonies raise obvious concerns regarding [REDACTED] credibility. The manner in which this Court learned of these inconsistencies underscores the problem in which this Court is reliant on others to convey what [REDACTED] said. Further, in attempting to assess [REDACTED]'s testimony, it is worth noting that even Miller conceded that there is nothing in the notes from the [REDACTED] Hospital interviews to set forth the time frame, frequency or time relationship between sexual encounters.

Going back to the expert testimony itself, Miller seemed to be saying that one of the reasons that physical evidence is not present is because the body has the ability to heal itself. Certainly, in a case where a long period of time has passed since the abuse ceased, healing would erase the physical scars of that abuse. In this case the abuse was allegedly ongoing when it was stopped and reported. Reviewing the medical records, there is no indication that anyone even asked [REDACTED] when the last time anal penetration occurred but, given the allegations, it is reasonable to conclude that it would have been recent. (judging from the decision in the Family Court, [REDACTED] may have claimed anal sex last occurred on the day the alleged abuse was discovered, which was one day prior to the physical examination) Additionally, given the fact that [REDACTED] was a boy of eleven at the time and the Respondent a full-grown adult, there is some reason to believe that even if one accepts Miller's expertise some evidence of anal penetration should have been found if there was, in fact, sexual abuse as alleged. Indeed, if the anal penetrations began when [REDACTED] was merely eight years old, then [REDACTED] should have experienced some problem controlling his bowel movements as Rosenberg testified and that should have been apparent to Sellars, if nothing else, when she did the laundry, long before her alleged

discovery on November 27, 2005

Further Rosenberg concurred with Heller's testimony that there is usually a delay in reporting by the victim. He noted, however, that most child abuse is uncovered by outside agencies because of extreme acting out by the victim. This acting out, he said, was a result of the emotional and physical trauma associated with being the victim of sexual abuse. This Court found that analysis to be quite credible and notes that there is no testimony about any such conduct on the part of [REDACTED]

This then brings us to the need to analyze the testimony of Sellars, who claims to have uncovered the abuse. There is no obvious pecuniary motive for Sellars to have made the allegations in the first place nor is there any indication of any advantage she might gain by testifying, as she did, in this forum. That said, there are nonetheless concerns about her credibility.

First, she is an admitted substance abuser. While she claimed that she gave up using marijuana some time shortly before November 27, 2005, one of the first things she did was to go out and purchase marijuana and alcohol after her alleged discovery. It is not clear that one should accept her claim not to have actually smoked the marijuana or to have drunk any quantity of the brandy.

She also conceded, after some prodding, that she lost her job as a home health care aide because she falsified time records. She also conceded that she violated her employer's policy regarding drug usage by getting advance notice of when she would be tested and then taking measures to pass the drug tests by bringing clean urine from someone else or attempting to cleanse her system.

Perhaps the biggest potential problem with Sellars' testimony is how she claims to

have discovered the sexual abuse. This is best set forth in the Family Court decision where the judge there noted

the sexual abuse Ms Sellars allegedly witnessed conveniently occurred at the only location in the entire apartment from which Ms Sellars could have viewed such an event exiting her bedroom. That respondent, who allegedly took pains for years to cover up almost daily sexual abuse of [REDACTED] would have engaged in sexual acts with this child with the mother present in this very small apartment in the only location which would have been immediately in view of the mother exiting her bedroom, defies credibility.

The Family Court judge, along with the entire court entourage visited the apartment before making that observation. The accuracy of the judge's observation can readily be seen in the Crime Scene Unit diagram of the apartment (DX 4) and on which Sellars marked the locations where she claimed she, [REDACTED] and the Respondent were at the time of the incident. The Family Court judge's further comment that "had respondent and [REDACTED] been a foot or two inside the living room area, Ms Sellars could not have seen them upon exiting her bedroom. In fact, had respondent and [REDACTED] been in the second bedroom, the living room, the kitchen or the bathroom, this witness [Sellars] would not have been able to observe them as she exited her bedroom" is likewise supported by the diagram in evidence in this proceeding.

Further, while there is no clear motive for Sellars to have made up this allegation against the Respondent, the Family Court judge noted that [REDACTED] supported the Respondent's contention that the Respondent had told Sellars that he was breaking up with her and was leaving her prior to the alleged discovery on November 27, 2005.

There are therefore questions about the reliability and believability of Sellars' testimony.

The Department also claimed that semen found on a washcloth with the Respondent's DNA somehow provides independent corroboration of the sexual abuse of [REDACTED] by the Respondent. The fact is that both Sellars and the Respondent report that they had a heterosexual, adult, sexual relationship and engaged in sex at that apartment as recently as that afternoon.

It is true that the Department produced some evidence that might indicate that the semen did not wind up on the washcloth from that afternoon's sexual encounter. But it did not prove that the semen was the result of an encounter with [REDACTED]. Sellars did not witness the Respondent ejaculate and there is no testimony that indicated that he did so earlier that day with [REDACTED].

All the washcloth proves is that the Respondent ejaculated at some time in that apartment. It does not tell us how, when or with whom.

In the end, without any testimony or transcript of testimony from [REDACTED] the Court simply does not have any direct indication of the details of what [REDACTED] said and how he handled questions. As such the Department has not presented sufficient substantial evidence to sustain its case. Additionally, after reviewing all the available evidence the doubts about the Respondent's guilt exceed the evidence sustaining the charges.¹¹ As a result the Department has failed to meet its burden of proof. For all these reasons the Court must find the Respondent Not Guilty of Specification Nos 1 and 2.

Specification Nos 3 alleges that the Respondent did act in a manner likely to be injurious to the physical mental or moral welfare of a child less than seventeen years old.

¹¹ The Family Court judge put this conclusion somewhat differently in his findings. He stated "This court cannot know for certain whether or not Mr Lawrence abused [REDACTED] however the court cannot find under these circumstances that petitioner satisfied its burden of proof."

in that said Detective not being the biological father or legal guardian of a person known to this Department less than seventeen (17) years of age, did inappropriately touch said person in the groin and/or buttock area, in that said Detective did shave and/or cut the pubic hairs of said person and/or did apply lotion and/or medicine to said person in said areas' Specification No 5 contains the same preamble but the conduct alleged is that the Respondent 'was photographed with said individual when both parties were nude'

The language of these specifications track the language of the penal law crime of Endangering the Welfare of a Child, which is charged in both specifications. Certainly, if this conduct was connected with sexual abuse, it would constitute "grooming" and would constitute misconduct. As has been noted, there is insufficient evidence to establish that [REDACTED] was sexually abused. The question then becomes whether the conduct, standing on its own, constitutes the crime of Endangering the Welfare of a Child.

The first thing to note is that, even if the Respondent touched [REDACTED] buttocks and groin to apply medication, that conduct would seem to be reasonable given the fact that [REDACTED] clearly had a very serious skin disorder that required medication. As to the pubic haircutting. Sellars herself asked the Respondent to do this because the child became sexually aroused when she did it and it embarrassed both of them.

In the course of this trial, the Department called two expert witnesses in child abuse. Outside of their testimony about grooming, neither was asked or offered evidence that the conduct alleged in these specifications was harmful to the mental, moral or physical welfare of [REDACTED]. The Department has not produced a single case to support the notion that the Respondent's alleged conduct in cutting [REDACTED] pubic hair putting medication on his body or being nude with him in the bathroom constituted this crime.

Nor could this Court find such a case. The Family Court judge is also someone who should have some experience with what constitutes improper conduct vis-a-vis a child. In dealing with the photographs of [REDACTED] and the Respondent naked in the bathroom, that judge described the photographs as "much ado about nothing".¹²

Without evidence that the conduct referred to in this specification constitutes the crime alleged, the Respondent is found Not Guilty of Specification Nos 3 and 5.

Specification No 4 charges that the Respondent engaged in conduct prejudicial, 'in that said Detective, having knowledge or suspicion that Nicole Sellars was using illegal drugs and was the custodial parent of an individual known to this Department who was less than seventeen (17) years of age, did fail to report Nicole Sellars, as a required as a mandatory reporter. The specification then references two sections of law

The first is the Penal Law § 260.10, Endangering the Welfare of a Child. The second section of law referenced is Social Services Law, Title 6 § 413, generally referred to as the mandated reporter act and requires a long list of professionals including police officers, to report suspected child abuse to the New York State Office of Children and Family Services. This report must be made to the statewide central registry of child abuse and maltreatment (see § 422).

The Respondent testified that he knew of Sellars' marijuana use and hinted that she might have used other drugs. Sellars admitted to being a marijuana user but denied using other drugs and there is no evidence before this Court that she used any drug other than marijuana. The specification alleges that, based on his knowledge that Sellars used marijuana, the Respondent, as a mandated reporter, had an obligation to report Sellars to

¹² It is worth noting that the Respondent did not pose for the pictures. The photographs were taken by Sellers without the Respondent's prior knowledge or consent.

the state's child abuse registry and that failing to do so also constituted the crime of Endangering the Welfare of a Child

While Sellars' conduct may, in some generalized sense, sound like it falls into the category of something that had to be reported, an examination of the law itself indicate that no report was mandated. Section 413 (1) a, in pertinent part, reads as follows

The following persons and officials are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child. [The statute goes on to list a large number of professionals, including police officers.]

Several issues emerge in any effort to apply the language of statute to the instant case. The first is that the conduct to be reported involves an abused or maltreated child. There are applicable definitions of an abused or maltreated child.

An 'abused child' is a child whose parent or other person legally responsible for his/her care inflicts upon the child serious physical injury, creates a substantial risk of serious physical injury, or commits an act of sex abuse against the child. Not only can a person be abusive to a child in their care, they can be guilty of abusing a child if they allow someone else to do these things to that child.

Maltreatment refers to the quality of care a child is receiving from those responsible for him/her. Maltreatment occurs when a parent or other person legally responsible for the care of a child harms a child, or places a child in imminent danger of harm by failing to exercise the

minimum degree of care in providing the child with any of the following food, clothing, shelter, education or medical care when financially able to do so Maltreatment can also result from abandonment of a child or from not providing adequate supervision for the child Further, a child may be maltreated if a parent engages in excessive use of drugs or alcohol such that it interferes with their ability to adequately supervise the child¹³

What this specification refers to is some undefined abuse or maltreatment resulting from Sellars' alleged drug use Except for the claim of child abuse covered in Specifications 1 through 3, there are no other claims that [REDACTED] was an abused, neglected or maltreated child

An examination of the definition of maltreatment found in the statute cited above makes clear that the focus is not on the parent, but on the child While the definition refers to drug and alcohol use by the parent, to be reportable maltreatment the substance abuse must be of such a nature that it interferes with the ability of the parent to adequately supervise the child

Certainly a person, whether a mandated reporter or not, can make a report when a parent is a drug user The question here is whether the reporting was mandated The facts presented do not establish that [REDACTED] was maltreated, consequently, there was no reporting obligation

The second issue relates to whether the Respondent was, under the circumstances, a mandated reporter The language of the statute is quite clear that, to trigger the mandated reporting requirement, the child or information regarding an abused or

¹³ These definitions were obtained from the New York State Office of Children & Family Services website, <http://www.ocfs.state.ny.us/main/prevention/critical.asp> The definitions are based on Section 412 of the Social Services Law and Section 1012 of the Family Court Act

maltreated child comes before someone whose position makes him or her a mandated reporter "in their official capacity." Mandated reporters include, for example, a list of people in the healthcare profession. There is also a long list of persons working in the education and school system. The overriding criteria are that these are people—including police officers, who would be in a position to encounter child abuse or neglect during the course of their official duties. The law specifically and emphatically limits the burden of mandated reporting to those individuals acting in their official capacity.¹⁴

There are any number of reasons why the drafters of the statute, and those charged with it, draw a bright line between the responsibility of a mandated reporter acting in his or her professional capacity and one who is not. The first is that there are both criminal and civil sanctions for failing to report. The second is that the threshold for reporting is suspicion. Requiring individuals to be mandated reporters in personal and social relationships has the potential to create all kinds of difficult conflicts and expose an individual to criminal sanctions arising out of a failure to report on what are essentially private interactions.

Anticipating the Department's argument in regard to off-duty responsibilities if a police officer takes police action while off-duty and he or she comes across a situation which mandates a report to the registry, such an officer would be acting in an official capacity and the officer would have to make the report. In this case, however, the Respondent's interactions with Sellars did not involve him acting in his official capacity. His relationship with her was personal and thus the mandated reporting requirement was

¹⁴ The Mandated Reporter Resource Center, funded by the New York State Office for Children and Family Services, provides a website with guidance for mandated reporters. In defining the responsibilities of mandated reporters, it emphasizes in bold text that the responsibility to report is limited to those individuals on the list when acting in their professional capacities. <http://www.nysmandatedreporter.org/default2.html>. The website also points out that a failure to report can trigger civil and criminal penalties.

not triggered

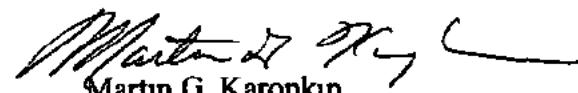
The drafters of the statute wisely excluded personal situations from the mandated reporter's obligations. This Court and this Department should not disturb that

The "Endangering" charge under the penal law is equally without basis. Again, there is no evidence of maltreatment and there is no evidence to show how the Respondent's alleged failure to report endangered [REDACTED] The claim of endangerment is purely speculative, which takes it outside of the statute. The Department has provided no factual evidence to support the criminal charge nor has it provided any case law or legal precedent to support its claim. Indeed, it is difficult to know exactly what the theory is behind charging the Respondent with this violation of the penal law.

This is not to say that this Court condones the Respondent's conduct. It is not clear exactly when in the course of their relationship the Respondent discovered that Sellars used marijuana. Clearly he did know about it at some point, apparently well before November 2005, yet the Respondent continued his relationship with her. Indeed, he continued to reside, at least part time, with her after he knew that she kept marijuana in her apartment. This Court, however, can only deal with the charges presented to it.

The Respondent is found Not Guilty of Specification No 4 as charged

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner - Trials

APPROVED

JUN 09 2011
RAYMOND W KELLY
POLICE COMMISSIONER